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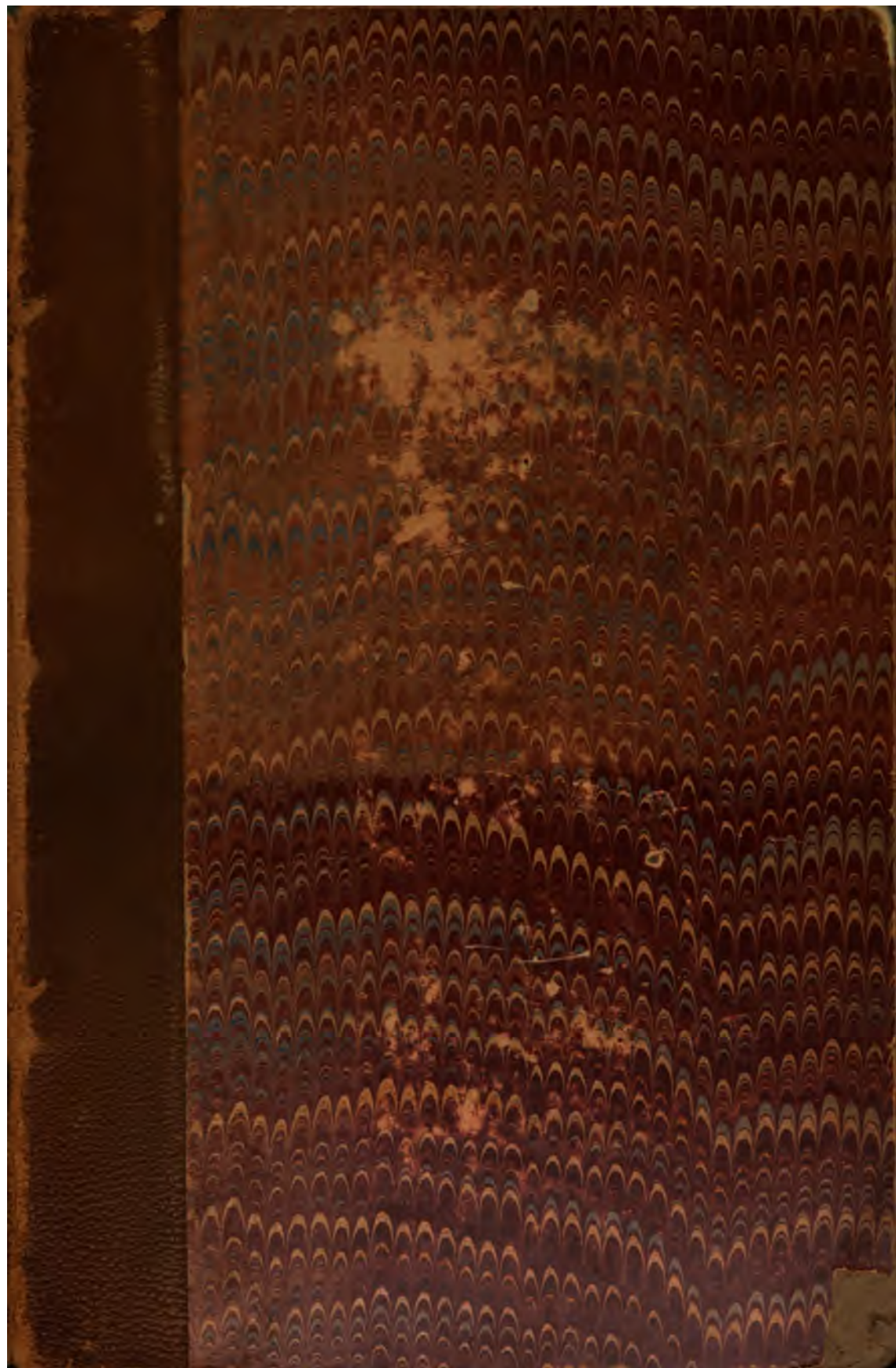
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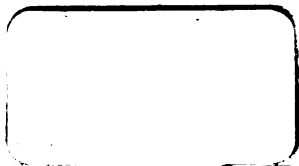
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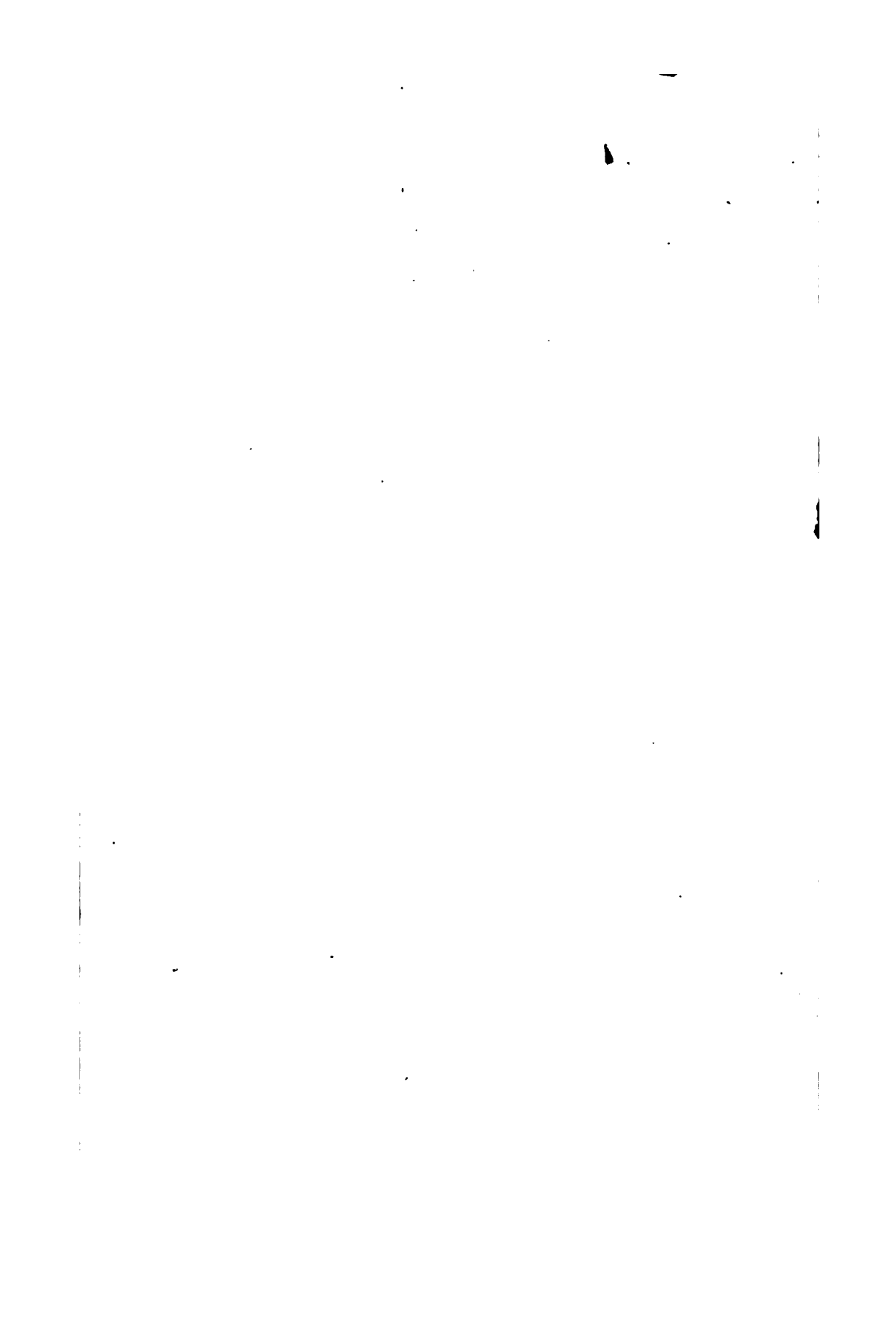
CHARLES MINOT

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SECTION IV

SPEECHES OF LORD ERSKINE.

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SPEECHES

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OF

THOMAS LORD ERSKINE.

WITH A MEMOIR OF HIS LIFE

BY

EDWARD WALFORD, M.A.

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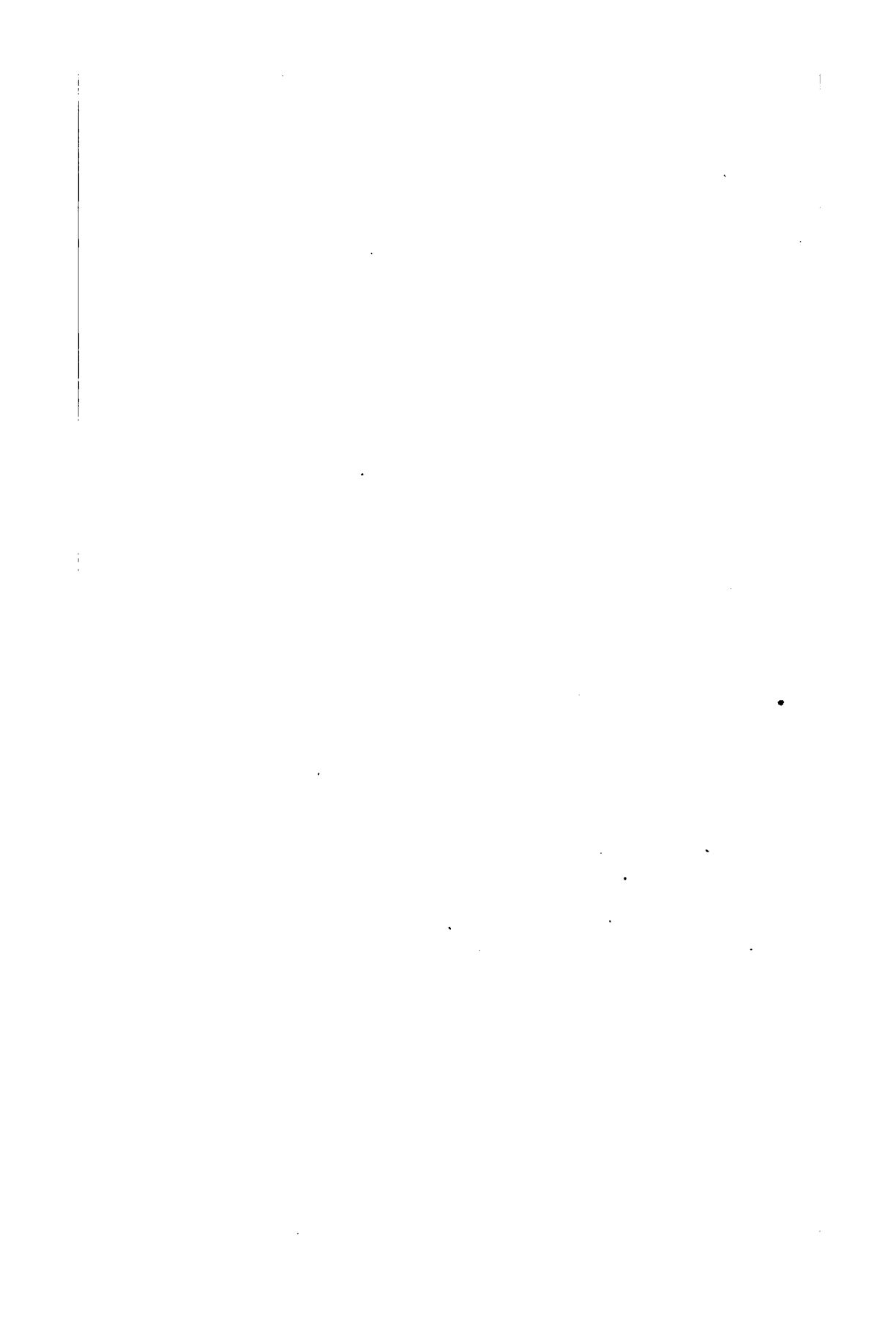
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THE present edition contains the whole of the Speeches of Lord Erskine, extracted *verbatim* from the Five Volume Octavo Edition of 1810. Some speeches of the opposing Counsel in the various Cases, with matter not required to elucidate the subjects, have been omitted to reduce the work to a more handy and cheaper form.



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LIFE OF LORD ERSKINE

THOUGH the eminent lawyer, a selection of whose speeches is contained in these volumes, was one who never rose as a lawyer to the level of such men as Lord Mansfield, and was inferior to many men of his own age as a Parliamentary debater, yet there are few persons who will dispute the verdict of his fellow-countryman, and eventually his successor on the Woolsack, Lord Campbell, who pronounces him, in his "Lives of the Chancellors," "without an equal in ancient or modern times as an Advocate in the Forum."

A younger son of the noble house of Erskine, Earls * of Buchan, Thomas Erskine was born on the 10th of January 1750, in a "small and ill-furnished room," in an upper "flat" of a lofty house in the old town of Edinburgh. His family, who derived their name from, or possibly gave it to, the lands of Erskine on the banks of the Clyde, were connections of the still older house of Mar,—of whom Lord Hailes says that their earldom dates from times anterior to history. But the Earls of Buchan, in the seventeenth and eighteenth centuries, had scattered to the winds a large portion of their hereditary wealth, so that, according to Lord Campbell, an income of £200 a year was all that was left to Henry David, the tenth Earl, on which to maintain and bring up his family. His Countess, however, Agnes, second daughter of Sir James Stewart of Goodtrees, in the county of Midlothian, was a woman of great energy, high character, and piety; and she struggled nobly with the disadvantages of her husband's narrow means. She brought her children up in a somewhat strict Presbyterian faith, as befitted the descendants of a religious house

* It is remarked by Sir N. W. Wraxall, that if Lord Erskine had been the son of a Marquis instead of the son of an Earl, he never could have been called to the bar.—*Memoirs*, vol. i. p. 153.

which had suffered much in the Covenanting cause. Still, the "flat" which she occupied with her husband and children was frequented not only by eloquent Presbyterian divines, but also by leaders of the "Parliament House," and by members of the best families who wintered in the Scottish metropolis.

A child of high spirit and very good abilities, young Tom Erskine was sent to the High School of his native city, where it is recorded that he rose to be "Dux," or, as we should say in England, "captain" or head-boy in his class. But unfortunately, in spite of its educational advantages, Lord Buchan found "Northern Athens" too expensive a place to live in, and accordingly, in 1762, removed with his children to St. Andrews. Here, at the grammar-school, under a Mr. Hacket, Tom Erskine maintained his early character for ability; but he does not appear to have been very industrious, since he picked up little Greek beyond the alphabet, and never attained to more than a very moderate stock of Latin. He was, however, fond of reading the English writers, both of prose and verse, and he devoured whole volumes of travels, voyages, and plays with avidity. After leaving school, he attended several courses of lectures in the classes of mathematics and natural philosophy at the University of St. Andrews, but he never appears to have become a member of it by formal matriculation.

It was his early wish to have entered one of the learned professions; but the family purse was not well-lined enough to admit of this idea being realised; so it was settled that he should be a midshipman. He vainly strove against this destination, and indeed went so far as to try, through his relatives, to obtain instead a commission in the army without purchase: but the fates were against him, and to sea he was forced to go. Accordingly, in the spring of 1765 he was put under the charge of Sir David Lindsay, then captain of H.M.S. *Tartar*, with whom some little interest had been made on his behalf through his uncle, the Earl of Mansfield. Having been duly fitted out with his blue jacket, cocked hat, and sword, he joined his ship at Leith, and spent four years very pleasantly and happily, if we may judge from allusions in his letters, in cruising about the American station and in various parts of the West Indies. On returning home, however, at the age of nineteen, he found, on his ship being paid off, that he had no chance of going to sea again except as a "middy," and this did not

suit his pride, as he had been employed by his captain as acting-lieutenant.

His father died in 1767, and he again thought of entering a learned profession: but the scantiness of his inheritance prevented him from entering either of the English Universities; so, through the interest of the Duke of Argyll, he was glad to obtain an ensign's commission in the "Royals," or "First Regiment of Foot." But the purchase-money absorbed all his means. The first two years of his military life were spent, not on foreign service, but in barracks at various towns in England and Ireland. He appears, however, to have made good use of his leisure in one respect; for on the 29th of April 1770, when only just twenty years of age, he married a young lady of good family and connections, though not much more wealthy than himself, the daughter of Mr. Daniel Moore, M.P. His wife accompanied him to Minorca, whither his regiment was ordered, and where he spent two years, busily employing himself in going through a course of English literature. Lord Campbell tells us that he also "showed the versatility of his powers by acting as chaplain to the regiment, the real chaplain being absent on furlough." No doubt the extemporary prayers to which he must have listened, and in which he probably joined, at his mother's house, here stood him in good stead.

Returning to England in 1772, we find him mixing in the society of London, in which he was well fitted to shine even at that time; and he was a constant frequenter of the *salon* of Mrs. Montagu in Portman Square, where he used to meet most of the literary celebrities of the day, including Dr. Johnson; and, if we may believe Boswell, he was bold enough on one occasion to maintain a contest of words against that Goliath of criticism on the subject of the slaughter of the Assyrian host under Sennacherib by the destroying angel.* Fired with literary ambition, or a zeal for the army, or both, he now became an author, though anonymously. The title of his work explains the author's purpose, and shows that from very early convictions he was a genuine Liberal and Reformer. It was entitled, "Observations on the Prevailing Abuses in the British Army arising from the Corruption of Civil Government; with a Proposal to the Officers towards obtaining an Addition to their Pay. By the Hon. ———, an Officer. 1773." The

* Boswell's Johnson, ii. 177.

pamphlet had a large circulation. "The name of its author (says Lord Campbell) was well known, though it did not appear on the title-page; and he acquired much celebrity by the boldness and eloquence with which he had pleaded for his profession."

In 1773 he was promoted to the rank of lieutenant; but there seemed to be little or no chance of a war; and in peace he knew that he could not afford to purchase his commission as captain. It so happened, one day in the following year, that his regiment was quartered in a town where his relative, Lord Mansfield, was Judge of Assize. He came into court, was invited to sit by the Judge's side on the bench, and afterwards to dine with his Lordship at the Judge's lodgings. He communicated to Lord Mansfield his early desire in the direction of the bar; and finding no discouragement in that quarter, and on the contrary great sympathy from his mother, he resolved to carry out his design. Accordingly, in April 1775, he was admitted as a student at Lincoln's Inn, and in the following January entered Trinity College, Cambridge, as a fellow-commoner. At Cambridge, however, he did not follow the studies of the place; but concentrated his attention upon English literature, in which he proved his ability by carrying off the college prize for English declamation.

While still a student at Cambridge he contrived to keep his terms at Lincoln's Inn, and became a pupil, at first in the chambers of Mr. Justice Buller, then a special pleader, and after his elevation to the bench, in those of Mr. George Wood, afterwards a Baron of the Exchequer. At this time he lived in small lodgings in Kentish Town, at the foot of Hampstead and Highgate Hills, and he had the greatest difficulty in keeping the expenses of his young and increasing family within his slender means. In the evenings he used to take part in the debates of the Robin Hood, Coach-makers' Hall, and other "spouting shops," which, according to the custom of the time, were attended by shoemakers, weavers, Quakers, law-students, and members of Parliament, each person paying sixpence, and being entitled to a glass of porter or punch, and in which there is said to have been often a display of high oratorical powers.*

Though he never became a profound jurist, yet, with his lively imagination, he had a sound and logical understanding; and his

legal commonplace books, which are still in existence, show that at this period his application to the studies of his newly-adopted profession was close and unremitting. Hence his progress was respectable, if not brilliant; and in a very short space of time he was able to collect and arrange the authorities upon most questions of law which he had to consider, and so to arrive at a thorough comprehension of the issue at stake.

He was called to the bar in Trinity Term 1778, but continued working in the chambers of Baron Wood until the following month of November, when, by one of those extraordinary chances which from time to time happen in some paths of life, he was suddenly called upon to defend Captain Baillie, the Lieutenant-Governor of Greenwich Hospital, against whom an action was brought for publishing statements relative to the abuses of that institution, and which were construed into a reflection on Lord Sandwich, then First Lord of the Admiralty. A fee of a guinea was dropped into his hand as a retainer, and the case came on before Lord Mansfield. The expectation was, that the Solicitor-General would have no difficulty in making the rule absolute, and that Captain Baillie would lose his 'cause. But the speech of young Erskine, contained in this volume, at once electrified the Court and the audience. The rule was discharged with costs; Erskine's fame as an advocate was established, and his fortune virtually made.

Briefs and fees now flowed in upon him in a golden stream; he practised in the King's Bench, and there were few more popular barristers in Westminster Hall than Thomas Erskine. In January 1779 he gained fresh credit as counsel for Lord Keppel, who was tried by a court-martial, and whose acquittal he secured, and from whom he received a present of £1000 as a mark of his gratitude. In the spring of this year he joined the Home Circuit, and soon found himself fully employed. In the same year he appeared at the bar of the House of Commons against a bill which very nearly touched the liberty of the press,—the bill introduced by Lord North, vesting the right of printing and issuing almanacs in the Stationers' Company and the two Universities of Oxford and Cambridge. The bill was rejected by a large majority, and mainly through his eloquence, which converted Lord North's brother-in-law from a supporter to an opponent.

We next find him, in 1780, engaged as counsel for Lieutenant Bourne, R.N., who was brought before the King's Bench for sending a challenge to his commanding officer, Admiral Wallace; and in the following year for Lord George Gordon, who was tried before Lord Mansfield for high treason on account of his share in the Protestant Riots of 1780. Here, too, in spite of the whole power of the Crown being put into force against the prisoner, and of a somewhat severe and unfavourable summing up from the Judge, he obtained for his client a verdict of "Not guilty." This acquittal, it need scarcely be added, gave a heavy blow to the law of constructive treason, as laid down by the Tory judges of the time.

In 1783, on the formation of the "Coalition" Ministry, he entered Parliament as M.P. for Portsmouth, his Whig friends being anxious for the assistance of his eloquent advocacy in the House of Commons; and it is not a little singular that both he and his rival and successor in the Chancellorship, John Scott, afterwards Lord Eldon, made their maiden speeches in the same debate,—that on Mr. Fox's famous India Bill. But Erskine's speech was tame,* and fell somewhat flat upon the ears of his audience, who possibly expected that in St. Stephen's he would equal the flights of his eloquence on the other side of Westminster Hall. He spoke, however, again, and with better effect, on the second reading of the bill, and ably contended for the right of Parliament to control the proceedings of the East India Company.

The bill was lost in the Lords, and the "Coalition" Ministry resigned. On the accession of Pitt to office, Erskine spoke in support of Fox's motion (January 1784) for going into a committee on the state of the nation. He again spoke against Pitt's India Bill, which he contrasted with that of Fox, and of which he prophesied that it would "prove the ruin of the East India Company, and lead to the oppression of the inhabitants of Hindostan, till they would rise and shake off our yoke." It need hardly be added, that subsequent events have proved that Erskine's words were all but realised in fact a short time before the formal transfer of the provinces of India from the Company to the Crown, twenty years ago. He again spoke on the motion for stopping the supplies in consequence of the King's refusal to dismiss his

* Sir N. W. Wraxall's *Memoirs*, ii. 436.

Ministers. The motion was carried, but Pitt resolved to appeal to the nation. Parliament was dissolved, and failing to secure his re-election at Portsmouth, Erskine remained for seven years out of Parliament.

Perhaps it was well for him that such was the case. He had not made any great success in St. Stephen's; but though he had been only five years at the bar, he had already obtained a patent of precedence which entitled him to wear a silk gown, and to sit within the bar. He had already refused to hold junior briefs: and while he wore a stuff gown, a number of "juniors"—many years his seniors in point of age—were thrown out of business, as, consistently with professional etiquette, they could not be retained with him in any cause. Accordingly his silk gown was not merely a compliment and an honour, but of positive service to himself and to others.

He now began to be in most extensive request, not merely on his own circuit, but elsewhere; and accordingly he laid himself out for "special retainers," by which he was taken to the assizes in all parts of England and Wales, with a fee in each case of at least three hundred guineas.* His first "special retainer" was in the case of *Rex v. Shipley*, Dean of St. Asaph, for a "seditious libel"—which was nothing else than the publication of a "Dialogue between a Gentleman and a Farmer," written by the Dean's brother-in-law, Sir William Jones, in illustration of the general principles of political economy, and quietly recommending some very moderate parliamentary reforms. The jury, in spite of a very adverse summing up of the Judge, found Dr. Shipley "guilty of publishing only," but declined to find "whether a libel or not." In the next Michaelmas Term, the case was re-opened, and practically re-heard; and Erskine moved in arrest of judgment, and with success. "This prosecution," says Lord Campbell, "seemed to establish for ever the fatal doctrine that *libel or no libel* was a pure question of law, for the exclusive determination of judges appointed by the Crown. But in the event it led to the subversion of that doctrine, and the establishment of the liberty of the press, under the guardianship of English juries. . . . I have said, and I still think" (he adds), "that this great constitutional triumph is mainly to be ascribed to Lord Camden, who had been fighting in the cause for half a century

/ * Townsend's *Lives of Eminent Judges*, i. 423.

and who uttered his last words in the House of Lords in its support; but had he not received the invaluable assistance of Erskine, as counsel for the Dean of St. Asaph, the Star Chamber might have been re-established in this country." *

While out of Parliament, Erskine appeared occasionally at the bar of the House of Commons, but his success there was not such as to make him ambitious of continuing that part of his practice. He also gave up his circuit business, and confined himself to special retainers. He kept up also his intimacy with the leaders of the Whig party, especially Fox and Sheridan, through whom he became personally acquainted with the Prince Regent—then a zealous Whig—who made him his Attorney-General, and gave him reason to expect hereafter still further promotion.

In the autumn of 1788 occurred the King's illness, which it was fully expected would at once have placed the heir-apparent on the throne. But the near prospect of Erskine's hopes or expectations of political power were set aside by the King's speedy recovery, and the prolonged tenure of office by Mr. Pitt and his Tory friends. In the following year, 1789, as counsel for Stockdale the publisher, he made what Lord Campbell does not hesitate to call "the finest speech ever delivered at the English bar, and which for ever established the freedom of the press in England," and of which the *Edinburgh Review* † says, "It is justly regarded by all English lawyers as a consummate specimen of the art of addressing a jury—as a standard and sort of precedent for treating cases of libel." The offence of Mr. Stockdale was the publishing of a pamphlet by the Rev. Mr. Logan, a Scottish minister, in which Warren Hastings was exculpated from the charges brought against him, and the House of Commons compared to the tribunal of the Inquisition. It is almost needless to add that the speech, which will be found in this volume, was followed by a verdict of "Not guilty."

Erskine's reputation as an advocate was now at its height. In this year he paid a visit to Paris, from which he returned with his Liberal opinions strongly confirmed in the democratical direction. In the autumn he was again returned to Parliament for Portsmouth, which he continued to represent until he was raised to the Peerage. In May 1791, he seconded Fox's motion for declaring

* Campbell's *Lives of the Chancellors*, viii. 279.

† Vol. xvi. 109.

the law of libel ; in April 1792, on Mr. Grey's motion for parliamentary reform, he defended with much spirit the proceedings of the "Society of Friends of the People ;" and, true to his opinions, he declined to join the ranks of the "Alarmists,"—as those Whigs were called who, frightened at the progress of democracy in France, were inclined to abandon their Liberal principles, and, with the Prince of Wales, to go over to the Tory camp. By this adherence to his own views and those of Fox, he knew that he was sacrificing all chance of further employment as a law-officer of the Crown ; but was contented to waive all his prospects rather than abandon the fixed and deliberate principles with which he had started in public life. Hence he vehemently opposed the idea of striving to suppress Jacobitism by new penal laws ; hence he attacked Pitt's "Traitorous Correspondence Bill ;" and hence, when he knew that the majority on the other side was overwhelming, he made an elaborate speech in favour of parliamentary reform.

In the following year, contrary to the advice of Lord Loughborough and some of his best friends, he held a brief for "Tom Paine," the author of "The Rights of Man." Here, however, he failed, as he could scarcely have escaped failing, to convince the jury that the book came within the category of useful publications. Nor was the loss of his client's cause his only disappointment. For taking this brief, he was suspended from his office as Attorney-General to the Prince of Wales. He was equally unsuccessful in defending John Frost against a Government prosecution for seditious words spoken in a public-house ; but he won a verdict, as counsel for the defence, in a far more important cause, the Government prosecution of Messrs. Perry and Grey, the proprietors of the *Morning Chronicle*, for inserting in their paper an address from a society at Derby, complaining of the unsatisfactory state of the representation of the people in Parliament.

The year 1793, and the following years, have been called, in a legal sense, "The Reign of Terror," on account of the constant efforts of the Tory Administration to put down all outward expressions of political dissatisfaction by the strong hand of the law, and by arbitrary and summary prosecutions. It was in consequence of the prevalence of this spirit that Thomas Hardy, a shoemaker, and eleven other obscure individuals, were put upon their trial for high treason, simply as belonging to a society, or societies, whose

end was parliamentary reform. Erskine, of course, was engaged for the defence of Hardy, against Sir John Scott, the Attorney-General, and Chief-Justice Eyre, who showed every wish to forward the case for the Crown. But in spite of all the forces that the Crown could bring to bear against the prisoner, Hardy was acquitted, and the speech delivered on that occasion by his advocate will live for ever. The Government, however, with extraordinary infatuation, resolved to try the experiment of repeating the same drama, by putting another of the twelve, John Horne Tooke, on his trial, but with the same result; and, when this too failed, they prosecuted a third person, named Thelwall. Erskine was counsel for the defence in both these cases; and the acquittal of Tooke and Thelwall so thoroughly discomfited the Government, that they resolved not to go on with the prosecution in the case of the rest of their victims. Such was the joy of the people that bonfires were lit in various parts of London, and the mob took the horses from Erskine's carriage, and drew him in triumph back from the court to his house in Serjeants' Inn.

In 1795 he spoke in Parliament with considerable effect against a motion for the repeal of the Habeas Corpus Act, against the Seditious Meetings Bill, and against the bill for making a conspiracy to levy war, without any overt act of warfare, equivalent to high treason. But somewhat, it must be owned, inconsistently with his own principles and antecedents, he was a party, in common with Fox and Sheridan, to the prosecution of Mr. John Reeves in the following year, for the publication of a book which dealt in some very abstract criticism on our mixed constitution of King, Lords, and Commons, the strongest passage of which asserted simply that "the kingly government may go on, in all its functions, without Lords or Commons; . . . but without the King, his Parliament is no more." It seems, indeed, absurd that the party which nailed to its mast the flag of "free inquiry into all political subjects" should have crouched down to the King on bended knees, and have asked leave to turn the engine of a political prosecution against a philosophical-minded gentleman for propounding such hypothetical statements in the retirement of his library, and asserting in print his belief that they were abstractly true. They might be quite true, and yet the House of Brunswick might still sit safely on the throne. At all events, such would be our natural com-

ment, looking back upon them after an interval of nearly four-score years. It is only fair to add, however, that Erskine was not actually engaged in the prosecution.

After this misadventure, which sadly dimmed his popularity, Erskine rarely spoke in Parliament, save on one occasion. In attacking Pitt on his motion for an address to the King urging the active prosecution of the war, the accomplished advocate and orator fairly "broke down." He now joined Fox and the other Whig leaders in their secession from active opposition in Parliament, and reserved himself for more auspicious times, amusing his leisure by publishing a pamphlet on "The Causes and Consequences of the War with France," which went through no less than thirty-seven editions.

In 1797, we find him again seconding Mr. Grey's annual motion for parliamentary reform. In 1799, he spoke in reprobation of the rejection of the overtures of peace made by Napoleon when First Consul; and about the same time in favour of a bill to make adultery an indictable offence, against the revival of monastic institutions in England, and against the bill which excluded "clerks in holy orders" from seats in the House of Commons.

His next successes were gained as counsel for William Stone, who was prosecuted for treason, and for the Bishop of Bangor, who was indicted for riot and assault. He was employed for the prosecution against Tom Paine for the publication of his "Age of Reason;" and here, too, he was again successful, Paine being found guilty, and sentenced to a year's imprisonment. But his more appropriate sphere, and that in which he shone far better, was as counsel for the defence; and never did his ability come out more strongly than in his defence of Lord Thanet and Mr. B. C. Fergusson, who were indicted for a conspiracy to rescue Arthur O'Connor at Maidstone, though he failed to procure their acquittal.

It would be tedious to attempt to enumerate all the cases in which Mr. Erskine was engaged at this time; defending now the Whig *Courier* against a prosecution for "libel" against the Emperor of Russia; now Mr. Cuthell, the bookseller, for publishing a pamphlet by Gilbert Wakefield; now Hadfield, the madman, for shooting at George III. in Drury Lane Theatre. His speech on the latter occasion is, perhaps, one of the best efforts of his genius,

and is of great service to lawyers as a summary and storehouse of the legal distinctions in cases of mental disease. In the case of *Day v. Day*, a long and protracted litigation, in which were repeated the main features of the well-known "*Douglas Case*," he suffered a discomfiture; but to the last he maintained that he was right, and that Lord Kenyon, before whom it was tried, was wrong, in his law. In cases of criminal conversation he was thought especially to excel, and his speeches in the well-known causes of *Markham v. Fawcett* and *Howard v. Bingham* will be found in this volume.

During the closing years of Mr. Pitt's first Administration, and also during that of his successor, Mr. Addington, despairing not of his cause, but of his party, Erskine kept very much aloof from politics, and declined the overtures of the latter, who wished to offer him the post of Attorney-General. He was, however, disposed to give Mr. Addington a qualified and independent support, and he severely censured Mr. Pitt in one of his speeches, first for his refusal to make peace with Napoleon, and then for deserting the helm of the State at a critical juncture.

In 1802 he paid another visit to Paris, where, however, he found himself very inconveniently eclipsed by the greater Whig luminary, Mr. Fox, who happened to be there at the same time. In the following year, he was appointed to the command of the Temple Corps of Volunteers, generally called "*The Devil's Own*,"* in the ranks of which his biographer, then "*plain John Campbell*," served as a private; but his command was neither very effective nor of very long duration, and only served to prove how little real taste he ever could have felt for the second of the three professions of which he successively became a member. His last speech in the House of Commons was in opposition to the clause which was proposed to be introduced into the Volunteer Consolidation Bill, preventing the resignation of volunteers till the conclusion of a general peace.

On the resignation of Addington, there were again fresh rumours of a Coalition Government, including Grenville and Fox; but the obstinate King would not hear of Fox holding a seat in the Cabinet; so the negotiation fell through, and Pitt returned once more to power. Just at this time, Erskine had the misfortune to lose

* The Lincoln's Inn Volunteers went by the name of "*The Devil's Invincibles*."

his wife. She died in December 1805, and lies buried in Hampstead parish church, where a mural monument records her name and her virtues.

On the death of Pitt, early in the following year—after an ineffectual attempt to form a Cabinet under Lord Hawkesbury, afterwards Earl of Liverpool—Lord Grenville was sent for to form an Administration. Fox now was included in it, and so was Erskine, who attained what may be presumed to have been the height of his ambition as a lawyer—the custody of the Great Seal. He took his seat on the Woolsack of the House of Lords in February 1806, as Baron Erskine,* of Restormel Castle, in the county of Cornwall—one of the ancient inheritances of the Prince of Wales. The appointment, observes Lord Campbell, was “politically natural, and even landable, but, judicially viewed, indefensible.” He observes, with reference to his want of acquaintance with equity, “Better would it have been for him to have accepted the office of Attorney-General, in the expectation that a common-law chief-justiceship might become vacant, the duties of which he might adequately have performed; or to have been content with being *by far the first advocate* that ever practised at the English bar—a position more enviable than that of an indifferent Chancellor, notwithstanding the precedence and power which the Great Seal confers.” Of the principles of equity, it must be owned that he knew but little;† and although he did his best, by the aid of other men, and by great attention to the arguments of counsel, to satisfy himself as to the merits of each case, and was eminently fair, honest, and impartial, still we fear that most members of the legal profession would agree that Lord Campbell is scarcely overstating the case against him, when he says that, after the experiment of his Chanceryship, which

* When his arms, as a peer, was made out by the Heralds' College, he dropped the motto of his family, and took instead the appropriate words, “*Trial by Jury.*”

† “The decisions *temp.* Erskine are to be found in the 12th and 13th vols. of the Reports of Vesey, jun. I believe that but little *bad* doctrine is to be found in them; yet . . . it must be admitted that there is, generally speaking, a striking tenuity about them; that, if they do not do injustice to the parties, they lay down few useful rules; and that if they do not disturb, they do little to advance, our code of equity. In the whole series of them, I do not think that there is once an allusion to the civil or foreign jurists; and the illustrations are drawn from *nisi prius* more frequently than from the general principles established by the successive occupiers of the great chair. Luckily for the public, the office of Master of the Rolls was at this time held by Sir William Grant, who comes up to the highest standard that can be formed of judicial excellence.”—*Campbell's Lives of the Chancellors*, viii. 379.

was only of a year's duration, "from being the beheld of all beholders, Erskine sunk into comparative insignificance." In spite of his obvious unfitness for the post, so great was his personal popularity, that a very warm address of congratulation was drawn up by the Bar, and presented to him; and among those who signed it were many very staunch and inveterate Tories. He presided as Chancellor at the impeachment of Lord Melville. This was a fortunate circumstance for his credit in that capacity, as his *nisi prius* knowledge, and his ability to decide on questions of evidence, stood him here in good stead, and helped to bring out prominently the best of his judicial qualities.

Nor does it appear that either in Parliament or in the Cabinet was his influence great; but he supported the bill for the abolition of the slave-trade, although at the cost of abandoning the opinions which, in early life, he had formed as to the comparative comfort of the position of the slave. He was one of the pall-bearers at the funeral of Fox, in Westminster Abbey; and did his best to bring the stupid old King to his senses in respect of the Roman Catholic claims. In March 1807, however, a change came over the state of political affairs, and, with his party, he was obliged to resign office.

The rest of his story is soon told. He now came forward only on rare occasions, and to oppose measures which he considered thoroughly objectionable. Thus he opposed the expedition to Copenhagen, and even supported a motion for restoring the Danish fleet. He also took an active part in censuring the famous Orders in Council respecting neutral navigation, foretelling that they would lead to complications, if not to a war, with America, and would ultimately have to be abandoned. We now find him busying himself with such details as opposing a bill allowing arrest for libel, and bringing forward another for prevention of cruelty to dumb animals. Although, on the question of the commitment of Sir Francis Burdett to the Tower, he took the unpopular side, yet he gradually adopted more enlightened views as to the claims of the Roman Catholics; but, as yet, he was not prepared to place them on a perfect equality with their Protestant fellow-countrymen.

In 1810, he supported the views of those who were inclined to place the Regency in the hands of the Prince of Wales, without any restrictions; and for a short time the Great Seal seemed to be once more within his grasp; but from and after the avowed resolu-

tion of the Prince Regent to adhere to Mr. Spencer Percival and the Tories (1811), he appears, in common with his party, to have renounced all thoughts of public employment, and to have made up his mind to abstain from all further interference in the course of political affairs. He even paid very little attention to the judicial business of the House of Lords, and seems henceforth to have resolved to give himself up to a life of wit and pleasure in West-End society. He still lived at Hampstead, not far from Lord Mansfield's villa of Caen Wood, and would even occupy his leisure hours by taking in hand a spade or a rake. Shortly after this time he sold his house at Hampstead, and bought an estate near Crawley, in Sussex, where he thought, by an attention to the laws of agriculture, and by the practice of the strictest economy, that he should be able to turn a barren district into a smiling park. The latter, however, turned out a barren speculation, and the best crop it could produce was a supply of stunted birch-trees; and as he found himself approaching nearer to old age, without any great provision made against its arrival, he gave it up in despair. He would often enliven the dinner-table at Lincoln's Inn (of which he was a bencher) by anecdotes of his contemporaries. The best of his *mots*, however (and they were many), was that which he made with respect to the Chancellorship and the Polar expedition. Captain Parry, the Arctic navigator, dining in the hall one day, complained that he and his crew, when frozen up in the Polar regions, had nothing to live on but the *seals*. "And very good living too," replied Erskine, "*if you can only keep them long enough!*"

He was frequently present, and often the president, at the ceremony of laying the first stone of buildings of societies and institutions. Nothing pleased him better than to be present at fashionable balls and breakfasts of peculiar *éclat*. He also strove to divert *ennui*, and to recover his lost ground, by publishing his "*Armata*," an imitation of the "*Utopia*" of Sir Thomas More and of "*Gulliver's Travels*," and which was fairly successful in its day, though it is now forgotten.

In 1812 there was some idea that the Whigs would return to office; but Lord Erskine's views, especially with respect to Catholic Emancipation, were in advance of his age; and accordingly he gave up all thoughts of further employment, and continued to devote himself to the pleasures of West-End society.

For the next years of his life he rarely attended the House of Lords, and in spite of the fact that law reform was among the questions of the day, he turned a deaf ear to the subject. About this time he was made a Knight of the Thistle, an honour which he coveted the more, and appreciated the more highly, because it reflected honour on the land of his birth. He took an active and interested part in the Banbury Peerage case, protesting very strongly and vehemently against the decision arrived at by the Lords. In 1819 he supported Lord Grey's amendment to the address, condemning the Manchester massacre, and brought in a bill for the prevention of arrest of the suspected libeller before indictment found against the libeller. He took a strong and active part in mitigation of all the strong measures taken against the multitude by the Regent's Administration, and also in the trial of Queen Caroline, by whom he thoroughly stood against her Royal Consort. His last speech in the House was delivered in her cause.

In 1820 he paid a visit to Scotland (the first since he had left Leith as a middy), wearing the order of the Thistle—an honour of which his fellow-countrymen were extremely proud. He now revisited his old haunts, the place of his birth, and the old familiar stairs up and down which he had trudged, some sixty years ago, a curly-haired stripling. He was well and kindly received by his countrymen, except by Sir Walter Scott, who, as a genuine Tory, stood aloof.

Having parted with his fine house in Lincoln's Inn Fields, and his villa at Hampstead, he spent the remainder of his days in a lodging in Arabella Row, Pimlico, moving occasionally to a cottage on his estate of Holmbush, near Crawley, in Sussex, which he called Buchan Hill. He also contracted a second marriage at Gretna Green, the lady of his choice being a Miss Sarah Buck. In the early part of 1823, by way of proof that to the last he was interested in all questions of the day, he published a pamphlet on the "Agricultural Distress." But it was obvious to his friends that his career was drawing to its close. In the summer of that year he resolved to pay a visit to his brother, the Earl of Buchan, at Dryburgh Abbey, and (as there were no steamers or express trains in those days) he took ship at Blackwall for Edinburgh. On the voyage he was attacked by a serious illness; was landed at Leith, and reaching the residence of his sister-in-law, the Hon.

Mrs. Henry Erskine, at Almondell, he died on the 17th of the November following, at the age of seventy-three. He was buried in a family vault at Uphall, in the county of Linlithgow. Had he died in London, it is more than probable that he would have been honoured by a funeral in Westminster Abbey: as it is, his remains repose in a quiet and peaceful country churchyard, far away from the din of law-courts and the busy haunts of men.

By his first wife he had a family of eight children—four sons and four daughters. Of the latter, Frances married the Rev. Dr. Holland, precentor and prebendary of Chichester, and died in 1859; Elizabeth married the late Sir David Erskine, and died in 1800; Margaret died unmarried in 1857; and the youngest, Mary, married David Morris, Esq., and was left a widow in 1815. Of the sons, the first was David Montagu, second lord; the second, Henry David, some time Dean of Ripon, who married Lady Mary Harriet, third daughter of John, first Earl of Portarlington, and died in 1859; the third, the Right Hon. Thomas Erskine, one of the Judges of the Court of Common Pleas, married Henrietta Eliza, only daughter of Henry Trail, Esq., and died in 1864; and the youngest, Esme Stewart, a lieutenant-colonel in the army, and deputy-adjutant-general, who served as aide-de-camp to the Duke of Wellington at the battle of Waterloo, where he lost an arm, died in 1817.

In his title he was succeeded by his eldest son, David Montagu, some time British Minister at the court of Munich. He married Fanny, the daughter of General Cadwallader of Philadelphia, by whom he had a numerous family; and dying in 1855, was succeeded by his eldest son, Thomas Americus, the present and third Lord Erskine, who was born in 1802, and married in 1830, Louisa, daughter of George Newnham, Esq., of Newtimber Place, Sussex, and widow of Thomas Legh, Esq., of Adlington, Cheshire, which lady died in 1867. d. 1817

There is no marble monument erected by the nation to Erskine's memory, nor any mural inscription to celebrate his genius and his public services; "but," to use the words of his biographer, Lord Chancellor Campbell, "the collection of his speeches will preserve his name as long as the English language endures;" and a simple narrative of his life will best show his claim to the gratitude of posterity as one who laboured, and not wholly in vain, in the cause

of human progress and freedom, and the advancement of enlightened legislation. "Let us imagine to ourselves," adds his biographer, "an advocate inspired by a generous love of fame, and desirous of honourably assisting in the administration of justice by obtaining redress for the injured and defending the innocent,—one who has liberally studied the science of jurisprudence, and has stored his mind and refined his taste by a general acquaintance with elegant literature,—one who has an intuitive insight into human character, and into the workings of human passion,—one who is able not only by his powers of persuasion to give the best chances of success to every client whom he represents in every variety of public causes, but also to defeat conspiracies against the public liberty founded on a perversion of the criminal law,—and one who, by the victories which he gains and the principles which he establishes, helps to place the free constitution of his countrymen on an imperishable basis. Such an advocate was Erskine. . . . Such an advocate, in my opinion, stands quite as high in the scale of true greatness as the parliamentary leader who ably opens a budget, or who lucidly explains a new system of commercial policy, or who dexterously attacks the measures of the existing Government. . . . I will not here enter into a comparison of the respective merits of the different sorts of oratory handed down to us from antiquity; but I may be allowed to observe, that among ourselves, in the hundred and fifty volumes of "*Hansard's Debates*," there are no specimens of parliamentary harangues which, as literary compositions, are comparable to the speeches of Erskine at the bar, with the exception of Burke's, and these were delivered to empty benches. . . . There will probably again be a debater equal to the elder or the younger Pitt, to Fox or Sheridan, Burke or Grey, before there arises another advocate equal to Thomas Erskine." *

* Campbell's *Lives of the Chancellors*, vol. ix.

SPEECHES OF LORD ERSKINE.

SPEECH for Captain BAILLIE, delivered in the Court of King's Bench, on the 24th of November 1778. Taken in shorthand, and published, with the rest of the proceedings, by Captain BAILLIE himself, in 1779.

THE SUBJECT.

CAPTAIN THOMAS BAILLIE, one of the oldest captains in the British Navy, having, in consideration of his age and services, been appointed Lieutenant-Governor of the Royal Hospital for Superannuated Seamen at Greenwich, saw (or thought he saw) great abuses in the administration of the charity; and prompted, as he said, by compassion for the seamen, as well as by a sense of public duty, had endeavoured by various means to effectuate a reform.

In pursuance of this object, he had at various times presented petitions and remonstrances to the Council of the Hospital, the Directors, and the Lords Commissioners of the Admiralty, and he had at last recourse to a printed appeal addressed to the General Governors of the Hospital. These Governors consisted of all the great officers of state, privy councillors, judges, flag-officers, &c., &c.

Some of the alleged grievances in this publication were, that the health and comfort of the seamen in the Hospital were sacrificed to lucrative and corrupt contracts, under which the clothing, provisions, and all sorts of necessaries and stores, were deficient; that the contractors themselves presided in the very offices appointed by the charter for the control of contracts, where, in the character of counsellors, they were enabled to dismiss all complaints, and carry on with impunity their own system of fraud and peculation.

But the chief subject of complaint (the public notice of which, as Captain Baillie alleged, drew down upon him the resentment of the Board of Admiralty) was, that *landmen* were admitted into the offices and places in the Hospital designed exclusively for *seamen* by the spirit, if not by the letter, of the institution. To these landmen, Captain Baillie imputed all the abuses he complained of, and he more than in-

sinuated, by his different petitions, and by the publication in question, that they were introduced to these offices for their election services to the Earl of —, as freeholders of Huntingdonshire.

He alleged further, that he had appealed from time to time to the Council of the Hospital and to the Directors without effect, and that he had been equally unsuccessful with the Lords Commissioners of the Admiralty during the presidency of the Earl of Sandwich; that, in consequence of these failures, he resolved to attract the notice of the General Governors, and, as he thought them too numerous as a body for a convenient examination in the first instance, and besides had no means of assembling them, a statement of the facts through the medium of this appeal, drawn up exclusively for their use, and distributed solely among the members of their body, appeared to him the most eligible mode of obtaining redress on the subject.

In this composition, which was written with great zeal and with some asperity,* the names of the landmen, intruded into the offices for seamen, were enumerated; the contractors also were held forth and reprobated, and the First Lord of the Admiralty himself was not spared.

On the circulation of the book becoming general, the Board of Admiralty suspended Captain Baillie from his office; and the different officers, contractors, &c., in the Hospital, who were animadverted upon, applied to the Court of King's Bench, in Trinity Term, 1778, and obtained a rule upon Captain Baillie to show cause, in the Michaelmas Term following, why an information should not be exhibited against him for a libel.

All Captain Baillie's leading counsel having spoken on the 23d of November, and, owing to the lateness of the hour, the Court having adjourned the argument till the morning of the 24th, Mr. Erskine spoke as follows, from the back row of the Court, we believe for the first time, as he had only been called to the bar on the last day of the term preceding.

THE SPEECH.

MY LORD,—I am likewise of the counsel for the author of this supposed libel; and if the matter for consideration had been merely a question of private wrong, in which the interests of society were no farther concerned than in the protection of the innocent, I should have thought myself well justified, after the very able defence made by the learned gentlemen who have spoken before me, in sparing your Lordship, already fatigued with the subject, and in leaving my client to the prosecutor's counsel and the judgment of the Court.

But upon an occasion of this serious and dangerous complexion, when a British subject is brought before a court of justice only for having ventured to attack abuses which owe their continuance to

* The foundation for it we do not mean to enter into, the editor being a stranger to all the circumstances, and the preface being only introduced as explanatory of the speech.

the danger of attacking them ; when, without any motives but benevolence, justice, and public spirit, he has ventured to attack them, though supported by power, and in that department, too, where it was the duty of his office to detect and expose them, I cannot relinquish the high privilege of defending such a character ; I will not give up even my small share of the honour of repelling and of exposing so odious a prosecution.

No man, my Lord, respects more than I do the authority of the laws, and I trust I shall not let fall a single word to weaken the ground I mean to tread, by advancing propositions which shall oppose or even evade the strictest rules laid down by the Court in questions of this nature.

Indeed, it would be as unnecessary as it would be indecent ; it will be sufficient for me to call your Lordship's attention to the marked and striking difference between the writing before you, and I may venture to say almost every other, that has been the subject of argument on a rule for a criminal information.

The writings or publications which have been brought before this Court, or before grand juries, as libels on individuals, have been attacks on the characters of private men, by writers stimulated sometimes by resentment, sometimes, perhaps, by a mistaken zeal ; or they have been severe and unfounded strictures on the *characters* of public men, proceeding from officious persons taking upon themselves the censorial office, without temperance or due information, and without any call of duty to examine into the particular department of which they choose to become the voluntary guardians—a guardianship which they generally content themselves with holding in a newspaper for two or three posts, and then, with a generosity which shines on all mankind alike, correct every department of the state, and find at the end of their lucubrations that they themselves are the only honest men in the community. When men of this description suffer, however we may be occasionally sorry for their misdirected zeal, it is impossible to argue against the law that censures them.

But I beseech your Lordship to compare these men and their works with my client and the publication before the Court.

Who is he ?—What is his duty ?—What has he written ?—To whom has he written ?—And what motive induced him to write ?

He is Lieutenant-Governor of the Royal Hospital of Greenwich, a palace built for the reception of aged and disabled men who have maintained the empire of England on the seas, and into the offices and emoluments of which, by the express words of the charter, as well as by the evident spirit of the institution, no landmen are to be admitted.

HIS DUTY—in the treble capacity of Lieutenant-Governor, Director, and a General Governor—is, in conjunction with others, to watch over the internal economy of this sacred charity, to see that

the setting days of these brave and godlike men are spent in comfort and peace, and that the ample revenues appropriated by this generous nation to their support are not perverted and misapplied.

HE HAS WRITTEN, that this benevolent and politic institution has degenerated from the system established by its wise and munificent founders; that its Governors consist, indeed, of a great number of illustrious names and reverend characters, but whose different labours and destinations in the most important offices of civil life rendered a deputation indispensably necessary for the ordinary government of the Hospital; that the difficulty of convening this splendid corporation had gradually brought the management of its affairs more particularly under the direction of the Admiralty; that a new charter has been surreptitiously obtained, in repugnance to the original institution, which enlarges and confirms that dependence; that the present First Lord of the Admiralty (who, for reasons sufficiently obvious, does not appear publicly in this prosecution) has, to serve the base and worthless purposes of corruption, introduced his prostituted freeholders of Huntingdon into places destined for the honest freeholders of the seas; that these men (among whom are the prosecutors) are not only landmen, in defiance of the charter, and wholly dependent on the Admiralty in their views and situations, but, to the reproach of all order and government, are suffered to act as Directors and officers of Greenwich, while *they themselves* hold the very subordinate offices, the *control* of which is the object of that direction; and inferring from thence (as a general proposition) that men in such situations cannot, as human nature is constituted, act with that freedom and singleness which their duty requires, he justly attributes to these causes the grievances which his gallant brethren actually suffer, and which are the generous subject of his complaint.

He has written this, my Lord, not *to the public at large*, which has no jurisdiction to reform the abuses he complains of, but to *those only* whose express duty it is to hear and to correct them, and I trust they will be solemnly heard and corrected. He has not PUBLISHED, but only distributed his book among the Governors, to produce inquiry, and not to calumniate.

THE MOTIVE WHICH INDUCED HIM TO WRITE, and to which I shall by and by claim the more particular attention of the Court, was to produce reformation—a reformation which it was his most pointed duty to attempt, which he has laboured with the most indefatigable zeal to accomplish, and against which every other channel was blocked up.

My Lord, I will point to the proof of all this; I will show your Lordship that it was his duty to investigate; that the abuses he has investigated do really exist and arise from the ascribed causes; that he has presented them to a competent jurisdiction, and not to the public; and that he was under the indispensable necessity of

taking the step he has done to save Greenwich Hospital from ruin.

Your Lordship will observe, by this subdivision, that I do not wish to form a specious desultory defence, because, feeling that every link of such subdivision will, in the investigation, produce both law and fact in my favour, I have spread the subject open before the eye of the Court, and invite the strictest scrutiny. Your Lordship will likewise observe by this arrangement that I mean to confine myself to the *general* lines of his defence; the various affidavits have already been so ably and judiciously commented on by my learned leaders—to whom, I am sure, Captain Baillie must ever feel himself under the highest obligations—that my duty has become narrowed to the province of throwing his defence within the closest compass, that it may leave a distinct and decided impression.

And first, my Lord, as to its being his *particular duty* to inquire into the different matters which are the subject of his publication and of the prosecutors' complaint, I believe, my Lord, I need say little on this head to convince your Lordships, who are yourselves Governors of Greenwich Hospital, that the defendant, in the double capacity of Lieutenant-Governor and Director, is most indispensably bound to superintend everything that can affect the prosperity of the institution, either in internal economy or appropriation of revenue; but I cannot help reading two copies of letters from the Admiralty in the year 1742. I read them from the publication, because their authenticity is sworn to by the defendant in his affidavit; and I read them to show the sense of that Board with regard to the right of inquiry and complaint in all officers of the Hospital, even in the departments not allotted to them by their commissions.

“ADMIRALTY OFFICE, April 19, 1742.

“SIR,—The Directors of Greenwich Hospital having acquainted my Lords Commissioners of the Admiralty, upon complaint made to them, that the men have been defrauded of part of their just allowance of broth and pease-soup, by the smallness of the pewter dishes, which in their opinion have been artificially beaten flat, and that there are other frauds and abuses attending this affair, to the prejudice of the poor men, I am commanded by their Lordships to desire you to call the officers together in Council, and to let them know that their Lordships think them very blamable for suffering such abuses to be practised, which could not have been done without their extreme indolence in not looking into the affairs of the Hospital; that their own establishment in the Hospital is for the care and protection of the poor men, and that it is their duty to look daily into everything, and to remedy every disorder, and not to discharge themselves by throwing it upon the under-officers and servants; and that their Lordships, being determined to go to the

bottom of this complaint, do charge them to find out and inform them at whose door the fraud ought to be laid, that their Lordships may give such directions herein as they shall judge proper.—I am, Sir, your most obedient servant,
THOS. CORBET.

*"To Sir John Jennings,
Governor of Greenwich Hospital."*

"ADMIRALTY OFFICE, May 7, 1742.

"SIR,—My Lords Commissioners of the Admiralty having referred to the Directors of Greenwich Hospital the report made by yourself and officers of the said Hospital in Council, dated the 23d past, relating to the flatness of the pewter dishes made use of to hold the broth and pease-pottage served out to the pensioners, the said Directors have returned hither a reply, a copy of which I am ordered to send you enclosed: they have herein set forth a fact which has a very fraudulent appearance, and it imports little by what means the dishes became shallow; but if it be true, what they assert, that the dishes hold but little more than half the quantity they ought to do, the poor men must have been greatly injured; and the allegations in the officers' report, that the pensioners have made no complaint, does rather aggravate their conduct in suffering the men's patience to be so long imposed upon.

"My Lords Commissioners of the Admiralty do command me to express myself in such a manner as may show their wrath and displeasure at such a proceeding. You will please to communicate this to the officers of the house in Council.

"Their Lordships do very well know that the Directors have no power but in the management of the revenue and estates of the Hospital, and in carrying on the works of the building, nor did they assume any on this occasion; but their Lordships shall always take well of them any informations that tend to rectify any mistakes or omissions whatsoever concerning the state of the Hospital.—I am, Sir, your obedient servant,
THOS. CORBET.

*"To Sir John Jennings,
Governor of Greenwich Hospital."*

From these passages it is plain that the Admiralty *then* was sensible of the danger of abuses in so extensive an institution, that it encouraged complaints from all quarters, and instantly redressed them; for although corruption was not then *an infant*, yet the idea of making a job of Greenwich Hospital never entered her head; and indeed if it had, she could hardly have found at that time of day, a man with a heart callous enough to consent to such a scheme, or with forehead enough to carry it into public execution.

Secondly, my Lord, that the abuses he has investigated do in truth exist, and arise from the ascribed causes.

And at the word TRUTH I must pause a little to consider how far it is a defence on a rule of this kind, and what evidence of the falsehood of the supposed libel the Court expects from prosecutors, before it will allow the information to be filed, even where no affidavits are produced by the defendant in his exculpation.

That a libel *upon an individual* is not the less so for being true, I do not, *under certain restrictions*, deny to be law; nor is it necessary for me to deny it, because this is not a complaint in THE ORDINARY COURSE OF LAW, but an application to the Court to exert AN ECCENTRIC, EXTRAORDINARY, VOLUNTARY JURISDICTION, BEYOND THE ORDINARY COURSE OF JUSTICE; a jurisdiction, which I am authorised from the best authority to say, this Court will not exercise, unless the prosecutors come PURE AND UNPOLLUTED; denying upon oath the truth of every word and sentence which they complain of as injurious: for although, in common cases, the matter may be not the less libellous because true, yet the Court will not interfere by information for guilty or even equivocal characters, but will leave them to its ordinary process. If the Court does not see palpable MALICE and FALSEHOOD on the part of the defendant, and clear innocence on the part of the prosecutor, it will not stir;—it will say, This may be a libel; this may deserve punishment; but go to a grand jury, or bring your actions:—all men are equally entitled to the protection of the laws, but all men are not equally entitled to an extraordinary interposition and protection beyond the common distributive forms of justice.

This is the true constitutional doctrine of informations, and made a strong impression upon me, when delivered by your Lordship in this Court; the occasion which produced it was of little consequence, but the principle was important. It was an information moved for by General Piasto against the printer of the *Westminster Gazette*, for a libel published in his paper charging that gentleman, among other things, with having been tried at the Old Bailey for a felony. The prosecutor's affidavit denied the charges *generally* as foul, scandalous, and false; but did not traverse the aspersion I have just mentioned *as a substantive fact*; upon which your Lordship told the counsel, Mr. Dunning, who was too learned to argue against the objection, that the affidavit was defective in that particular, and should be amended before the Court would even grant a rule to show cause: for although such GENERAL denial would be sufficient where the libellous matter consisted of scurrility, insinuation, GENERAL abuse, which is no otherwise traversable than by innuendoes of the import of the scandal, and a denial of the truth of it, yet that when a libel consisted of DIRECT AND POSITIVE FACTS AS CHARGES, the Court required SUBSTANTIVE *traverses of such facts* in the affidavit before it would interpose to take the matter from the cognisance of a grand jury.

This is the law of informations, and by this touchstone I will try

the prosecutors' affidavits, to show that they will fall of themselves, even without that body of evidence with which I can in a moment overwhelm them.

If the defendant be guilty of any crime at all, it is for writing **THIS BOOK** : and the conclusion of his guilt or innocence must consequently depend on the scope and design of it, the general truth of it, and the necessity for writing it ; and this conclusion can no otherwise be drawn than by taking the **WHOLE** of it together. Your Lordships will not shut your eyes, as these prosecutors expect, to the *design* and *general truth* of the book, and go entirely upon the *insulated* passages, culled out, and set heads and points in their wretched affidavits, without context, or even an attempt to unriddle or explain their sense or bearing on the subject ; for, my Lord, they have altogether omitted to traverse the scandalous facts themselves, and have only laid hold of those warm animadversions which the recital of them naturally produced in the mind of an honest, zealous man, and which, besides, are in many places only conclusions drawn from facts as general propositions, and not aspersions on them as individuals. And where the facts do come home to them as **CHARGES**, *not one of them is denied by the prosecutors*. *I assert, my Lord, that in the Directors' whole affidavit* (which I have read repeatedly, and with the greatest attention) *there is not any one fact mentioned by the defendant which is substantially denied* : and even when five or six strong and pointed charges are tacked to each other, to avoid meeting naked truth in the teeth, they are not even contradicted by the lump, but a general innuendo is pinned to them all ; a mere illusory averment, that the facts mean to criminate them, and that they are not criminal ; **BUT THE FACTS THEMSELVES REMAIN UNATTEMPTED AND UNTOUCHED**.

Thus, my Lord, after reciting in their affidavit the charge of their shameful misconduct, in renewing the contract with the Huntingdon butchers, who had just compounded the penalties incurred by the breach of a former contract, and in that breach of contract, the breach of every principle of humanity, as well as of honesty ; and the charge of putting improper objects of charity into the Hospital, while the families of poor pensioners were excluded and starving ; and of screening delinquents from inquiry and punishment *in a pointed and particular instance*, and therefore traversable as a *substantive fact* ; yet not only there is no such traverse, but, though all these matters are huddled together in a mass, there is not even a general denial ; but one loose innuendo, that the facts in the publication are stated with an intention of criminating the prosecutors, and that, *as far as they tend to criminate them*, they are false.

Will this meet the doctrine laid down by your Lordship in the case of General Plasto ? Who can tell what they mean by criminality ? Perhaps they think neglect of duty not criminal,—

perhaps they think corrupt servility to a patron not criminal; and that if they do not **ACTIVELY** promote abuses, the winking at them is not criminal. But I appeal to the Court, whether the Directors' whole affidavit is not a cautious composition to avoid downright perjury, and yet a glaring absurdity on the face of it; for since the facts are not traversed, the Court must intend them to exist; and if they do exist, they cannot but be criminal. The very existence of such abuses in itself criminales those whose offices are to prevent them from existing. Under the shelter of such qualifications of guilt, no man in trust could ever be criminated. But at all events, my Lord, since they seem to think that the facts may exist without their criminality,—be it so: the defendant then does not wish to criminate them; he wishes only for effectual inquiry and information, that there may be no longer any crimes, and consequently no criminality. But **HE** trusts, in the meantime, and *I* likewise trust, that, while these facts do exist, the Court will at least desire the prosecutors to clear themselves before the General Council of Governors, to whom the writing is addressed, and not before any *packed* Committee of Directors appointed by a noble Lord, and then come back to the Court acquitted of all criminality, or according to the technical phrase, with *clean hands*, for protection.

Such are the merits of the affidavits exhibited by the Directors; and the affidavits of the other persons are, without distinction, subject to the same observations. They are made up either of general propositions, converted into charges by ridiculous innuendoes, or else of strings of distinct disjointed facts tied together, and explained by one general averment; and after all, the scandal, such as their arbitrary interpretation makes it, is still only denied with the old jesuitical qualification of criminality—*the facts themselves remaining untraversed, and even untouched*.

They are, indeed, every way worthy of their authors,—of Mr. —, the *good* steward, who, notwithstanding the remonstrances of the captain of the week, received for the pensioners such food as would be rejected by the idle vagrant poor, and endeavoured to tamper with the cook to conceal it; and of Mr. —, who converted their wards into apartments for himself, and the clerks of clerks, in the endless subordination of idleness; a wretch who has dared, with brutal inhumanity, to strike those aged men, who in their youth would have blasted him with a look. As to Mr. — and Mr. —, though I think them reprehensible for joining in this prosecution, yet they are certainly respectable men, and not at all on a level with the rest, nor has the defendant so reduced them. These two, therefore, have in fact no cause of complaint, and, Heaven knows, the others have no title to complain.

In this enumeration of delinquents, the Rev. Mr. — looks round, as if he thought I had forgotten him. He is mistaken; I well remember him: but *his* infamy is worn threadbare: Mr.

Murphy has already treated him with that ridicule which his folly, and Mr. Peckham with that invective which his wickedness deserves. I shall, therefore, forbear to taint the ear of the Court further with his name,—a name which would bring dishonour upon his country and its religion, if human nature were not happily compelled to bear the greater part of the disgrace, and to share it amongst mankind.

But these observations, my Lord, are solely confined to the prosecutors' affidavits, and would, I think, be fatal to them, even if they stood uncontroverted. But what will the Court say when *ours* are opposed to them, where the truth of every part is sworn to by the defendant? What will the Court say to the collateral circumstances in support of them, where every material charge against the prosecutors is confirmed? What will it say to the affidavit that has been made that no man can come safely to support this injured officer?—that men have been deprived of their places, and exposed to beggary and ruin, merely for giving evidence of abuses which have already by his exertions been proved before your Lordship at Guildhall, whilst he himself has been suspended as a beacon for prudence to stand aloof from, so that in this unconstitutional mode of trial, where the law will not lend its process to bring in truth by *force*, he might stand unprotected by the *voluntary* oaths of the only persons who could witness for him? * His character has, indeed, in some measure, broken through all this malice: the love and veneration which his honest zeal has justly created have enabled him to produce the proofs which are filed in Court; but many have hung back, and one withdrew his affidavit, *avowedly* from the dread of persecution, even after it was sworn in Court. Surely, my Lord, this evidence of malice in the leading powers of the Hospital would alone be sufficient to destroy their testimony, even when swearing collaterally to facts in which they were not themselves interested; how much more when they come as *prosecutors*, stimulated by resentment, and with the hope of covering their patrons' misdemeanours and their own by turning the tables on the defendant, and prosecuting *him* criminally, to stifle all necessary inquiry into the subject of his complaints?

Lieutenant Gordon, the First Lieutenant of the Hospital, and the oldest officer in the navy; Lieutenant William Lefevre; Lieutenant Charles Lefevre, his son; Alexander Moore; Lieutenant William Ansell; and Captain Allwright, have all positively sworn that a faction of landmen subsists in the Hospital, and that they do on their consciences believe that the defendant drew upon

* On the trial of a cause, every person acquainted with any fact is bound, under pain of fine and imprisonment, to attend on a subpoena to give evidence before the Court and jury; but there is no process to compel any man to make an affidavit before the Court.

himself the resentment of the prosecutors from his activity in correcting this enormous abuse, and from his having restored the wards that had been cruelly taken away from the poor old men; that on that just occasion the whole body of the pensioners surrounded the apartments of their Governor to testify their gratitude with acclamations, which sailors never bestow but on men who deserve them. This simple and honest tribute was the signal for all that has followed; the leader of these unfortunate people was turned out of office; and the affidavit of Charles Smith is filed in Court, which, I thank my God, I have not been able to read without tears; how, indeed, could any man, when he swears that for this cause alone his place was taken from him; that he received his dismissal when languishing with sickness in the infirmary, the consequence of which was, that his unfortunate wife and several of his helpless innocent children died in want and misery; THE WOMAN ACTUALLY EXPIRING AT THE GATES OF THE HOSPITAL. That such wretches should escape chains and a dungeon is a reproach to humanity, and to all order and government; but that they should become PROSECUTORS is a degree of effrontery that would not be believed by any man who did not accustom himself to observe the shameless scenes which the monstrous age we live in is every day producing.

I come now, my Lord, to consider TO WHOM HE HAS WRITTEN. This book is not PUBLISHED. It was not printed for SALE, but for the more commodious distribution among the many persons who are called upon *in duty* to examine into its contents. If the defendant had written it to calumniate, he would have thrown it abroad among the multitude: but he swears he wrote it for the attainment of reformation, and therefore confined its circulation to the proper channel till he saw it was received as a libel, and then he even discontinued that distribution, and only showed it to his counsel to consider of a defence; and no better defence can be made than that the publication was so *limited*.

My Lord, a man cannot be guilty of a libel who presents grievances before a *competent* jurisdiction, although the facts he presents should be false; he may, indeed, be indicted for a malicious prosecution, and even there a probable cause would protect him, but he can by no construction be considered as a libeller.

The case of Lake and King, in 1st Levinz, 240, but which is better reported in 1st Saunders, is directly in point. It was an action for printing a petition to the members of a Committee of Parliament, charging the plaintiff with gross fraud in the execution of his office. I am aware that it was an action on the case, and not a criminal prosecution; but I am prepared to show your Lordship that the precedent on that account makes the stronger for us. The truth of the matter, though part of the plea, was not

the point in contest; the justification was the presenting it to a proper jurisdiction, and printing it, as in this case, for more commodious distribution; and it was first of all resolved by the Court that the delivery of the petition to all the members of the committee was justifiable; and that it was no libel, *whether the matter contained were true or false*, it being an appeal in a course of justice, and because the parties to whom it was addressed had jurisdiction to determine the matter; that the intention of the law in prohibiting libels was to restrain men from making themselves their own judges, instead of referring the matter to those whom the constitution had appointed to determine it; and that to adjudge such reference to be a libel would discourage men from making their inquiries, with that freedom and readiness which the law allows, and which the good of society requires. But it was objected he could not justify the PRINTING; for by that means it was published to printers and composers; but it was answered, and resolved by the whole Court, that the printing, *with intent to distribute them among the members of the Committee*, was legal; and that the making many copies by clerks would have made the matter more public. I said, my Lord, that this being an action on the case, and not an indictment or information, made the stronger for us; and I said so because the action on the case is to redress the party in damages for the injury he has sustained as an individual, and which he has a right to recover unless the defendant can show that the matter is true, or, as in this case, whether true or false, that it is an appeal to justice. Now, my Lord, if a defendant's right to appeal to justice could in the case of Lake and King repel a plaintiff's right to damages, although he was actually damaged by the appeal, how much more must it repel a criminal prosecution which can be undertaken only for the sake of public justice, when the law says it is for the benefit of public justice to make such appeal? And that case went to protect even falsehood, and where the defendant was not particularly called upon in duty as an individual to animadvert: how much more shall it protect us, who were bound to inquire, who have written nothing but truth, and who have addressed what we have written to a competent jurisdiction?

I come, lastly, my Lord, to the motives which induced him to write.

The government of Greenwich Hospital is divided into three departments—the Council, the Directors, and the General Governors. The defendant is a member of every one of these, and therefore his duty is universal. The COUNCIL consists of the officers whose duty it is to regulate the internal economy and discipline of the house, the Hospital being, as it were, a large man-of-war, and the Council its commanders; and, therefore, these men, even by the present mutilated charter, ought all to be seamen. Secondly, The

Directors, whose duty is merely to concern themselves with the appropriation of the revenue, in contracting for and superintending supplies, and in keeping up the structure of the Hospital; and, lastly, the General Court of Governors, consisting of almost every man in the kingdom with a sounding name of office—a mere nullity, on the members of which no blame of neglect can possibly be laid; for the Hospital might as well have been placed under the tuition of the fixed stars as under so many illustrious persons, in different and distant departments. From the Council, therefore, appeals and complaints formerly lay at the Admiralty, the Directors having quite a separate duty; and, as I have shown the Court, the Admiralty encouraged complaints of abuses, and redressed them. But since the administration of the present First Lord, the face of things has changed. I trust it will be observed that I do not go out of the affidavit to seek to calumniate: my respect for the COURT would prevent me, though my respect for the said First Lord might not. But the very foundation of my client's defence depending on this matter, I must take the liberty to point it out to the Court.

The Admiralty having placed several landmen in the offices that form the Council, a majority is often artificially secured there; and when abuses are too flagrant to be passed over in the face of day, they carry their appeal to the Directors instead of the Admiralty, where, from the very nature of man, in a much more perfect state than the prosecutors, they are sure to be rejected or slurred over; because these acting Directors themselves are not only under the same influence with the complainants, but the subjects of the appeals are most frequently the fruits of their own active delinquencies, or at least the consequence of their own neglects. By this manœuvre the Admiralty is secured from hearing complaints; and the First Lord, when any comes as formerly from an individual, answers, with a perfect composure of muscle, that it is *coram non judice*—it does not come through the Directors. The defendant positively swears this to be true; he declares that, in the course of these meetings of the Council, and of appeals to the Directors, he has been not only uniformly overruled, but insulted as Governor in the execution of his duty; and the truth of the abuses which have been the subject of these appeals, as well as the insults I have mentioned, are proved by whole volumes of affidavits filed in Court, notwithstanding the numbers who have been deterred by persecution from standing forth as witnesses.

The defendant also himself solemnly swears this to be true. He swears that his heart was big with the distresses of his brave brethren, and that his conscience called on him to give them vent; that he often complained; that he repeatedly wrote to, and waited on, Lord —, without any effect, or prospect of effect; and that at last, wearied with fruitless exertions, and disgusted with the insolence of corruption in the Hospital, which hates him for his

honesty, he applied to be sent, with all his wounds and infirmities, upon actual service again. The answer he received is worthy of observation. The First Lord told him, in derision, that it would be the same thing everywhere else; that he would see the same abuses in a ship; and I do in my conscience believe he spoke the truth as far as depended on himself.

What, then, was the defendant to do under the treble capacity of Lieutenant-Governor, of Director, and of General Governor of the Hospital? My Lord, there was no alternative but to prepare, as he did, the statement of the abuses for the other Governors, or to sit silent, and let them continue. Had he chosen *the last*, he might have been caressed by the prosecutors, and still have continued the first inhabitant of a palace, with an easy, independent fortune. But he preferred the dictates of honour, and he fulfilled them at the expense of being discarded, after forty years' gallant service, covered with wounds, and verging to old age. But he respected the laws while he fulfilled his duty; his object was reformation, not reproach; he preferred a complaint, and stimulated a regular inquiry, but suspended the punishment of public shame till the guilt should be made manifest by a trial. He did not therefore *publish*, as their affidavits falsely assert, but only preferred a complaint *by distribution of copies to the Governors*, which I have shown the Court, by the authority of a solemn legal decision, is NOT A LIBEL.

Such, my Lords, is the case. The defendant,—not a disappointed malicious informer, prying into official abuses, because without office himself, but himself a man in office;—not troublesomely inquisitive into other men's departments, but conscientiously correcting his own;—doing it pursuant to the rules of law, and, what heightens the character, doing it at the risk of his office from which the effrontery of power has already suspended him without proof of his guilt;—a conduct not only unjust and illiberal, but highly disrespectful to this Court, whose judges sit in the double capacity of ministers of the law and governors of this sacred and abused institution. Indeed, Lord —— has, in my mind, acted such a part——

[*Here Lord Mansfield, observing the counsel heated with his subject, and growing personal on the First Lord of the Admiralty, told him that Lord —— was not before the Court.*]

I know that he is not formally before the Court, but for that very reason *I will bring him before the Court*: he has placed these men in the front of the battle, in hopes to escape under their shelter, but I will not join in battle with them: *their vices*, though screwed up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with *me*. I will drag *him* to light who is the dark mover behind the scene of iniquity. I

assert that the Earl of — has but one road to escape out of this business without pollution and disgrace: and *that is*, by publicly disavowing the acts of the prosecutors, and restoring Captain Baillie to his command. If he does this, then his offence will be no more than the too common one of having suffered his own *personal* interest to prevail over his *public* duty, in placing his voters in the Hospital. But if, on the contrary, he continues to protect the prosecutors, in spite of the evidence of their guilt, which has excited the abhorrence of the numerous audience that crowd this Court; IF HE KEEPS THIS INJURED MAN SUSPENDED, OR DARES TO TURN THAT SUSPENSION INTO A REMOVAL, I SHALL THEN NOT SCRUPLE TO DECLARE HIM AN ACCOMPLICE IN THEIR GUILT, A SHAMELESS OPPRESSOR, A DISGRACE TO HIS RANK, AND A TRAITOR TO HIS TRUST. But, as I should be very sorry that the fortune of my brave and honourable friend should depend either upon the exercise of Lord —'s virtues or the influence of his fears, I do most earnestly entreat the Court to mark the malignant object of this prosecution, and to defeat it. I beseech you, my Lords, to consider, that even by discharging the rule, and with costs, the defendant is neither protected nor restored. I trust, therefore, your Lordships will not rest satisfied with fulfilling your JUDICIAL duty, but, as the strongest evidence of foul abuses has, by accident, come collaterally before you, that you will protect a brave and public-spirited officer from the persecution this writing has brought upon him, and not suffer so dreadful an example to go abroad into the world as the ruin of an upright man for having faithfully discharged his duty.

My Lords, this matter is of the last importance. I speak not as an ADVOCATE alone—I speak to you as A MAN—as a member of a state whose very existence depends upon her NAVAL STRENGTH. If a misgovernment were to fall upon Chelsea Hospital, to the ruin and discouragement of our army, it would be no doubt to be lamented, yet I should not think it fatal; but if our fleets are to be crippled by the baneful influence of elections, WE ARE LOST INDEED! If the seaman who, while he exposes his body to fatigues and dangers, looking forward to Greenwich as an asylum for infirmity and old age, sees the gates of it blocked up by corruption, and hears the riot and mirth of luxurious landmen drowning the groans and complaints of the wounded, helpless companions of his glory,—he will tempt the seas no more. The Admiralty may press HIS BODY, indeed, at the expense of humanity and the constitution, but they cannot press *his mind*—they cannot press the heroic ardour of a British sailor; and instead of a fleet to carry terror all round the globe, the Admiralty may not much longer be able to amuse us with even the peaceable, unsubstantial pageant of a review.*

FINE AND IMPRISONMENT!—The man deserves a PALACE instead

* There had just before been a naval review at Portsmouth.

of a PRISON who prevents the palace, built by the public bounty of his country, from being converted into a dungeon, and who sacrifices his own security to the interests of humanity and virtue.

And now, my Lord, I have done;—but not without thanking your Lordship for the very indulgent attention I have received, though in so late a stage of this business, and notwithstanding my great incapacity and inexperience. I resign my client into your hands, and I resign him with a well-founded confidence and hope; because that torrent of corruption which has unhappily overwhelmed every other part of the constitution is, by the blessing of Providence, stopped *HERE* by the sacred independence of the judges: I know that your Lordships will determine *ACCORDING TO LAW*; and, therefore, if an information should be suffered to be filed, I shall bow to the sentence, and shall consider this meritorious publication to be indeed an offence against the laws of this country; but then I shall not scruple to say, that it is high time for every honest man to remove himself from a country in which he can no longer do his duty to the public with safety;—where cruelty and inhumanity are suffered to impeach virtue, and where vice passes through a court of justice unpunished and unproved.

SPEECH for THOMAS CARNAN, Bookseller, at the Bar of the House of Commons, on the 10th of May 1779. As taken in shorthand.

THE SUBJECT.

By letters-patent of King James I., the Stationers' Company and the Universities of Oxford and Cambridge had obtained the exclusive right of printing almanacs, by virtue of a supposed copyright in the Crown. This monopoly had been submitted to from the date of the grant in the last century, until Mr. Carnan, formerly a bookseller in St. Paul's Churchyard, printed them, and sold them in the ordinary course of his trade. This spirited and active tradesman made many improvements upon the Stationers' and University almanacs, and, at a very considerable expense, compiled many of the various classes of useful information, by which pocket almanacs have been rendered so very convenient in the ordinary occurrences of life, but which, without the addition of the calendar, few would have been disposed to purchase.

Upon the sale of Carnan's almanacs becoming extensive and profitable, the two Universities and the Stationers' Company filed a bill in the Court of Exchequer, for an injunction to restrain it, praying that the copies sold might be accounted for, and the remainder delivered up to be cancelled.

It appears from the proceedings printed at the time by the late Mr. Carnan, that the Court, doubting the validity of the King's charter, on which the right of the Universities and of the Stationers' Company was founded, directed a question upon its legality to be argued before the Court of Common Pleas, whose judges, after two arguments before them, certified that the patent was void in law; the Court of Exchequer thereupon dismissed the bill, and the injunction was dissolved.

Mr. Carnan, having obtained this judgment, prosecuted his trade for a short time with increased activity, when a bill was introduced into the House of Commons by the late Earl of Guilford, then Lord North, Prime Minister, and Chancellor of the University of Oxford, *to revert, by Act of Parliament, the monopoly in almanacs, which had fallen to the ground by the above-mentioned judgments in the King's courts.*

The preamble of the bill recited the exclusive right given to the Stationers and Universities by the charter of Charles II., as a fund for the printing of curious and learned books, the uniform enjoyment under it, the judgments of the courts of law upon the invalidity of the charter, and the expediency of regranting the monopoly for the same useful purposes by the authority of Parliament.

The bill being supported by all the influence of the two Universities in the House of Commons, and being introduced by Lord North in the plenitude of his authority, Mr. Carnan's opposition to it by counsel was considered at the time as a forlorn hope; but to the high honour of the House of Commons, it appears from the journals, vol. xxxvii, p. 388, that immediately on Mr. Erskine's retiring from the bar, the House divided, and that the bill was rejected by a majority of forty-five votes.

THE SPEECH.

MR SPEAKER,—In preparing myself to appear before you, as counsel for a private individual, to oppose the enactment of a *general* and *public* statute, which was to affect the *whole* community, I felt myself under some sort of difficulty. Conscious that no man, or body of men, had a right to dictate to, or even to argue with Parliament on the exercise of the high and important trust of legislation, and that the policy and expediency of a law was rather the subject of debate in the *House*, than of argument at the *bar*, I was afraid that I should be obliged to confine myself to the special injury which the petitioner, as an individual, would suffer, and that you might be offended with any *general* observations, which, if not applying to him personally, might be thought unbecoming in me to offer to the superior wisdom of the House.

But I am relieved from that apprehension by the great indulgence with which you have listened to the general scope of the question from the learned gentleman (Mr. Davenport) who has spoken before me, and likewise by the reflection, that I remember no instance where Parliament has taken away any right conferred by the law as a common benefit, without very satisfactory evidence that the universal good of the community required the sacrifice; because every unnecessary restraint on the natural liberty of mankind is a degree of tyranny which no wise legislature will inflict.

The general policy of the bill is then fully open to my investigation; because, if I can succeed in exposing the erroneous principles on which it is founded,—if I can show it to be repugnant to every wise and liberal system of government, I shall be listened to with the greater attention, and shall have the less to combat with, when I come to state the special grounds of objection which I am instructed to represent to you on behalf of the petitioner against it. Sir, I shall not recapitulate what you have already heard from the bar; you are in full possession of the facts which gave rise to the question, and I shall therefore proceed directly to the investigation of the principles which I mean to apply to them, in opposition to the bill before you—pledging myself to you to do it with as much truth and fidelity, as if I had the honour to speak to you as a member of the House. I am confident, sir, that, if you will indulge me with your attention, I shall make it appear that the very

same principles which emancipated almanacs from the fetters of the prerogative in the courts of law, ought equally to free them from all parliamentary restriction.

On the first introduction of printing, it was considered, as well in England as in other countries, to be a matter of state. The quick and extensive circulation of sentiments and opinions, which that invaluable art introduced, could not but fall under the gripe of governments, whose principal strength was built upon the ignorance of the people who were to submit to them. The PRESS was, therefore, wholly under the coercion of the Crown, and *all printing*, not only of *public* books, containing ordinances religious or civil, but *every species of publication whatsoever*, was regulated by the King's proclamations, prohibitions, charters of privilege, and finally by the decrees of the Star-Chamber.

After the demolition of that odious jurisdiction, the Long Parliament, on its rupture with Charles I., assumed the same power which had before been in the Crown; and after the Restoration the same restrictions were re-enacted and re-annexed to the prerogative by the statute of the 13th and 14th of Charles II., and continued down by subsequent acts, till after the Revolution. In what manner they expired at last, in the time of King William, I need not state in this House; their happy abolition, and the vain attempts to revive them in the end of that reign, stand recorded on your own journals, I trust, as perpetual monuments of your wisdom and virtue. It is sufficient to say, that the expiration of these disgraceful statutes, by the refusal of Parliament to continue them any longer, formed THE GREAT ERA OF THE LIBERTY OF THE PRESS IN THIS COUNTRY, and stripped the Crown of every prerogative over it, except that which, upon just and rational principles of government, must ever belong to the executive magistrate in all countries, namely, the exclusive right to publish religious or civil constitutions,—in a word, to promulgate every ordinance which contains the rules of action by which the subject is to live and to be governed. These always did, and, from the very nature of civil government, always ought to, belong to the sovereign, and hence have gained the title of prerogative copies.

When, therefore, the Stationers' Company, claiming the exclusive right of printing almanacs under a charter of King James I., applied to the Court of Exchequer for an injunction against the petitioner at your bar, the question submitted by the barons to the learned judges of the Common Pleas, namely, "WHETHER THE CROWN COULD GRANT SUCH EXCLUSIVE RIGHT?" was neither more nor less than this question—*Whether almanacs were such public ordinances, such matters of state, as belonged to the King by his prerogative, so as to enable him to communicate an exclusive right of printing them to a grantee of the Crown?* For the press being thrown open by the expiration of the licensing Acts, nothing could

remain exclusively to such grantees but the printing of such books as, upon solid constitutional grounds, belonged to the superintendence of the Crown as matters of authority and state.

The question so submitted was twice solemnly argued in the Court of Common Pleas; when the judges unanimously certified *that the Crown had no such power*; and their determination, as evidently appears from the arguments of the counsel, which the Chief-Justice recognised with the strongest marks of approbation, was plainly founded on this,—that almanacs had no resemblance to those public acts, religious or civil, which, on principle, fall under the superintendence of the Crown.

The counsel (Mr. Serjeant Glynn and Mr. Serjeant Hill), two of the most learned men in the profession, who argued the case for the plaintiffs, were aware that the King's prerogative in this particular had no absolute and fixed foundation, either by prescription or statute, but that it depended on public policy, and the reasonable limitation of executive power for the common good; they felt that the judges had no other standard by which to determine whether it *was* a prerogative copy, than by settling upon principles of good sense *whether it ought to be one*; they laboured, therefore, to show the propriety of the revision of almanacs by public authority; they said they contained the regulation of time; which was matter of public institution, having a reference to all laws and ordinances,—that they were part of the Prayer-Book, which belonged to the King as head of the Church,—that they contained matters which were received as conclusive evidence in courts of justice, and therefore ought to be published by authority,—that the trial by almanac was a mode of decision not unknown,—that many inconveniences might arise to the public from mistakes in the matters they contained: many other arguments of the like nature were relied on, which it is unnecessary for me to enumerate in this place, as they were rejected by the Court; and likewise, because the only reason of my mentioning them at all is to show, that the *public expediency or propriety* of subjecting almanacs to revision by authority, appeared to those eminent lawyers, and to the Court, which approved of their arguments, as only the standard by which the King's prerogative over them was to be measured. For if the judges had been bound to decide on that prerogative by *strict precedent*, or by any other rule than a judicial construction of the *just and reasonable* extent of prerogative, these arguments, founded on *convenience, expediency, and propriety*, would have been downright impertinence and nonsense; but taking them, as I do, and as the judges did, they were (though unsuccessful, as they ought to be) every way worthy of the very able men who maintained them for their clients.

Thus, sir, the exclusive right of printing almanacs, which, from the bigotry and slavery of former times, had so long been monopolised as a prerogative copy, was at last thrown open to the subject,

as not falling within the reason of those books, which still remain, and ever must remain, the undisputed property of the Crown.

The only two questions, therefore, that arise on the bill before you are—First, Whether it be wise or expedient for Parliament to revive a monopoly so recently condemned by the courts of law as unjust, from not being a fit subject of a monopoly, and to give it to the very same parties who have so long enjoyed it by usurpation, and who have, besides, grossly abused it? Secondly, Whether Parliament can, consistently with the first principles of justice, overlook the injury which will be sustained by the petitioner *as an individual*, from his being deprived of the exercise of the lawful trade by which he lives,—a trade which he began with the free spirit of an Englishman in contempt of an illegal usurpation,—a trade supported and sanctioned by a decree of one of the highest judicatures known to the constitution?

Surely, sir, the bill ought to be rejected with indignation by this House, under such circumstances of private injustice, independently of public inexpediency. If you were to adopt it, the law would be henceforth a snare to the subject—no man would venture to engage hereafter in any commercial enterprise, since he never could be sure that, although the tide of his fortunes was running in a free and legal channel, its course might not be turned by Parliament into the bosom of a monopolist.

Let us now consider more minutely the two questions for your consideration: the general policy, and the private injury.

As to the first, no doubt the Legislature is supreme, and may create monopolies which the Crown cannot. But let it be recollected, that the very same reasons which emancipated almanacs from the prerogative in the courts below, equally apply against any interference of Parliament. If almanacs be not publications of a nature to fall within the legal construction of prerogative copyrights, why should Parliament grant a monopoly of them, since it is impossible to deny that, if they contain such matters as in *policy* required the stamp or revision of public authority, the exclusive right of printing them would have been inherent in the Crown by prerogative; upon legal principles of executive power, in which case an Act would not have been necessary to protect the charter. And it is equally impossible to deny, on the other hand, that if they be not such publications as require to be issued or reviewed by authority, they then stand on the general footing of all other printing, by which men in a free country are permitted to circulate knowledge. The bill, therefore, is either nugatory, or the patent is void; and, if the patent be void, Parliament cannot set it up again without a dangerous infringement of the general liberty of the press.

Sir, when I reflect that this proposed monopoly is a monopoly in PRINTING, and that it gives, or rather continues it, to the Company of Stationers—the very same body of men who were the literary

constables to the Star-Chamber to suppress all the science and information, to which we owe our freedom—I confess I am at a loss to account for the reason or motive of the indulgence: but get the right who may, the principle is so dangerous, that I cannot yet consent to part with this view of the subject. The bill proposes that Parliament should subject almanacs to the revision of the King's authority, when the judges of the common law, the constitutional guardians of his prerogative, have declared that they do not on principle require that sanction: so that your bill is neither more nor less than the reversal of a decision, admitted to be wise and just; since, as the Court was clearly at liberty to have determined the patent to have been good, if the principle by which prerogative copies have been regulated in other cases had fairly applied to almanacs, *you*, in saying that such principle *does apply*, in fact arraign that legal judgment. God forbid, sir, that I should have the indecency to hint that this reasoning concerning public convenience and expediency will ever be extended to reach other publications more important than almanacs; but certainly the principle might, with much less violence than is necessary to bring them within the pale of authority, upon the principle of the bill before you, subject the most valuable productions of the press to parliamentary regulations, and totally annihilate its freedom.

Is it not, for instance, much more dangerous that the rise and fall of the fuuds, in this commercial nation, should be subject to misrepresentation than the rise or fall of the tides? Are not misconstructions of the arguments and characters of the members of this high assembly more important in their consequences than mistakes in the calendar of those wretched saints which still, to the wonder of all wise men, infest the liturgy of a reformed Protestant Church? Prophecies of famine, pestilence, national ruin, and bankruptcy, are surely more dangerous to reign unchecked than prognostications of rain or dust; yet they are the daily uncontrolled offspring of every private author, and I trust will ever continue to be so; because the liberty of the press consists in its being subject to no previous restrictions, and liable only to animadversion when that liberty is abused. But if almanacs, sir, are held to be such matter of public consequence as to be revised by authority, and confined by a monopoly, surely the various departments of science may, on much stronger principles, be parcelled out among the different officers of state, as they were at the first introduction of printing. There is no telling to what such precedents may lead; the public welfare was the burden of the preamble to the licensing Acts; the most tyrannical laws in the most absolute governments speak a kind, parental language to the abject wretches who groan under their crushing and humiliating weight: resisting, therefore, a regulation and supervision of the press *beyond the rules of the common law*, I lose sight of my client, and feel that I am speaking

for myself, for every man in England. With such a Legislature as I have now the honour to address, I confess the evil is imaginary. But who can look into the future? This precedent, trifling as it may seem, may hereafter afford a plausible inlet to much mischief: the protection of the LAW may be a pretence for a monopoly in all books on LEGAL subjects; the safety of the *state* may require the suppression of *histories* and *political writings*; even philosophy herself may become once more the slave of the schoolmen, and religion fall again under the iron fetters of the Church.

If a monopoly in almanacs had never existed before, and inconveniences had actually arisen from a general trade in them, the offensive principle of the bill might have been covered by a suitable preamble reciting that mischief; but having existed above a century by convicted usurpation, so as to render that recital impossible, you are presented with this new sort of preamble, in the teeth of facts which are notorious.

[*States the preamble of the bill.*]

First, it recites an exercise and enjoyment under the King's letters-patent, and then, without explaining why the patent was insufficient for its own protection, it proposes to confer what had been just stated to be conferred already, with this most extraordinary addition, "*Any law or usage to the contrary notwithstanding.*" Sir, if the letters-patent were void, they should not have been stated at all, nor should the right be said to have been exercised and enjoyed under them. On the other hand, if they were valid, there could be no law or usage to the contrary, for contradictory laws cannot both subsist. This has not arisen from the ignorance or inattention of the framer of the bill, for the bill is ably and artfully framed; but it has arisen from the awkwardness of attempting to hide the real merits of the case. To have preserved the truth, the bill must have ran thus:—

Whereas the Stationers' Company and the two Universities have, for above a century last past, CONTRARY TO LAW, usurped the right of printing almanacs, in exclusion of the rest of His Majesty's faithful people, and have from time to time harassed and vexed divers good subjects of our Lord the King for printing the same, till checked by a late decision of the courts of law:

Be it therefore enacted, that this usurpation be made legal, and be confirmed to them in future.

This, sir, would have been a curiosity indeed, and would have made some noise in the House, yet it is nothing but the plain and simple truth. The bill could not pass without making a sort of bolus of the preamble to swallow it in.

So much for the introduction of the bill, which, ridiculous as it is, has nevertheless a merit not very common to the preambles of modern statutes, which are generally at cross purposes with the enacting part. Here, I confess, the enacting part closes in to a

nicety with the preamble, and makes the whole a most CONSISTENT and respectable piece of tyranny, absurdity, and falsehood.

But the correctness and decency of these publications are, it seems, the great objects in reviving and confirming this monopoly, which the preamble asserts to have been hitherto attained by it, since it states "that such monopoly has been found to be convenient and expedient." But, sir, is it seriously proposed by this bill to attain these moral objects by vesting, or rather legalising, the usurped monopoly in the Universities, under episcopal revision, as formerly? Is it imagined that our almanacs are to come to us in future in the classical arrangement of Oxford, fraught with the mathematics and astronomy of Cambridge, printed with the correct type of the Stationers' Company, AND SANCTIFIED BY THE BLESSINGS OF THE BISHOPS? * I beg pardon, sir, but the idea is perfectly ludicrous; it is notorious that the Universities sell their right to the Stationers' Company for a fixed annual sum, and that this act is to enable them to continue to do so. And it is equally notorious that the Stationers' Company make a scandalous job of the bargain, and, to increase the sale of almanacs among the vulgar, publish under the auspices of religion and learning, the most senseless absurdities. I should really have been glad to have cited some sentences from the one hundred and thirteenth edition of Poor Robin's Almanac, published under the revision of the Archbishop of Canterbury and the Bishop of London, but I am prevented from doing it by a just respect for the House. Indeed, I know *no house* but a brothel that could suffer the quotation. The worst part of Rochester is ladies' reading when compared with them.

They are equally indebted to the calculations of their astronomers, which seem, however, to be made for a more *western* meridian than LONDON. Plow MONDAY falls out on a SATURDAY, and Hilary Term ends on Septuagesima Sunday. In short, sir, their almanacs have been, as everything else that is monopolised must be, uniform and obstinate in mistake and error, for want of the necessary rivalry. It is not worth their while to unset the press to correct mistakes, however gross and palpable, because they cannot affect the sale. If the moon is made to rise in the west, she may continue to rise there for ever. When ignorance, nonsense, and obscenity were thus hatched under the protection of a royal patent, how must they thrive under the wide-spreading fostering wings of an Act of Parliament. Whereas in Scotland and in Ireland, where the trade in almanacs has been free and unrestrained, they have been eminent for exactness and useful information. The Act recognises the truth of this remark, and prohibits the importation of them.

But, sir, this bill would extend not only to monopolise almanacs,

* The imprimatur of the Archbishop of Canterbury and Bishop of London was necessary by the letters-patent.

but every other useful information published with almanacs which render the common businesses of life familiar. It is notorious that the various lists and tables, which are portable in the pocket, are not saleable without almanacs. Yet all these, sir, are to be given up to the Stationers' Company, and taken from the public by the large words in the bill of *books, pamphlets, or papers*; since the booksellers cannot afford to compile these useful works, which, from their extensive circulation, are highly beneficial to trade, and to the revenue of stamps, if they must purchase from the Stationers' Company the almanac annexed to them, because the Company must have a profit, which will enhance their price. In short, sir, Parliament is going to tear a few innocent leaves out of books of most astonishing circulation, and of very general use, by which they will be rendered unsaleable, merely to support a monopoly established in the days of ignorance, bigotry, and superstition, which has deviated from the ends of its institution, senseless and worthless as they were, and which could not stand a moment, when dragged by a public-spirited citizen into the full sunshine of a MODERN English court of justice.

It would be a strange thing, sir, to see an odious monopoly, which could not even stand upon its legs in Westminster Hall, upon the broad pedestal of prerogative, though propped up with the precedents which the decisions of judges in darker ages had accumulated into law,—it would be a strange thing to see such an abuse supported and revived by the Parliament of Great Britain in the eighteenth century, in the meridian of the arts, the sciences, and liberty,—to see it starting up among your numberless acts of liberal toleration, and boundless freedom of opinion. God forbid, sir, that at this time of day we should witness such a disgrace as the monopoly of a twopenny almanac, rising up like a tare among the rich fields of trade which the wisdom of your laws has blown into a smiling harvest all around the globe.

But, sir, I forget myself; I have trespassed too long upon your indulgence; I have assumed a language fitter, perhaps, for the House than for its bar; I will now therefore confine myself in greater strictness to my duty as an advocate, and submit to your *private justice*, that, let the *public policy* of this bill be what it may, the individual whom I represent before you is entitled to your protection against it.

Mr Carnan, the petitioner, had turned the current of his fortunes into a channel perfectly open to him in law, and which, when blocked up by usurpation, he had cleared away at a great expense, by the decision of one of the highest courts in the kingdom. Possessed of a decree, founded too on a certificate from the judges of the common law,—was it either weak or presumptuous in an Englishman to extend his views, that had thus obtained the broadest seal of justice? Sir, he *did* extend them with the same liberal

spirit in which he began ; he published twenty different kinds of almanacs, calculated for different meridians and latitudes, corrected the blunders of the lazy monopolists, and, supported by the encouragement which laudable industry is sure to meet with in a free country, he made that branch of trade his first and leading object,—and I challenge the framer of this bill (even though he should happen to be at the head of His Majesty's Government) to produce to the House a single instance of immorality, or of any mistake or uncertainty, or any one inconvenience arising to the public from this general trade, which he had the merit of redeeming from a disgraceful and illegal monopoly. On the contrary, much useful learning has been communicated, a variety of convenient additions introduced, and many egregious errors and superstitions have been corrected. Under such circumstances, I will not believe it possible that Parliament can deliver up the honest labours of a citizen of London to be damasked and made waste paper of (as this scandalous bill expresses it) by any man or body of men in the kingdom. On the contrary, I am sure the attempt to introduce, through the Commons of England, a law so shockingly repugnant to every principle which characterises the English Government, will meet with your just indignation as an insult to the House, whose peculiar station in the government is the support of *popular freedom*. For, sir, if this Act were to pass, I see nothing to hinder any man, who is turned out of possession of his neighbour's estate by legal ejectment, from applying to you to give it him back again by Act of Parliament. The fallacy lies in supposing that the Universities and Stationers' Company *ever had* a right to the monopoly which they have exercised so long. The preamble of the bill supposes it,—but, as it is a supposition in the very teeth of a judgment of law, it is only an aggravation of the impudence of the application.

And now, Mr. Speaker, I retire from your bar, I wish I could say with confidence of having prevailed. If the wretched Company of Stationers had been my only opponents, my confidence had been perfect ; indeed so perfect, that I should not have wasted ten minutes of your time on the subject, but should have left the bill to dissolve in its own weakness : but, when I reflect that OXFORD AND CAMBRIDGE are suitors here, I own to you I am alarmed, and I feel myself called upon to say something, which I know your indulgence will forgive. The House is filled with their most illustrious sons, who no doubt feel an involuntary zeal for the interest of their parent Universities. Sir, it is an influence so natural, and so honourable, that I trust there is no indecency in my hinting the *possibility of its operation*. Yet I persuade myself that these learned bodies have effectually defeated their own interests by the sentiments which their liberal sciences have disseminated amongst you ; their wise and learned institutions have erected in your minds the august image of an enlightened statesmanship, which, trampling

down all personal interests and affections, looks steadily forward to the great ends of public and private justice, unawed by authority, and unbiassed by favour.

It is from thence my hopes for my client revive. If the Universities have lost an advantage, enjoyed contrary to law, and at the expense of sound policy and liberty, you will rejoice that the courts below have pronounced that wise and liberal judgment against them, and will not set the evil example of reversing it *here*. But you need not therefore forget that the Universities *have* lost an advantage,—and if it be a loss that can be felt by bodies so liberally endowed, it may be repaired to them by the bounty of the Crown, or by your own. It were much better that the people of England should pay ten thousands pounds a year to each of them, than suffer them to enjoy one farthing at the expense of the ruin of a free citizen, or the monopoly of a free trade.*

* According to the reasonable hint at the conclusion of the speech, *which perhaps had some weight* in the decision of the House to reject the bill, a parliamentary compensation was afterwards made to the Universities, and remains as a monument erected by a British Parliament to a free press.

SPEECH for GEORGE STRATTON, HENRY BROOKE, CHARLES FLOYER, and GEORGE MACKAY, Esqrs. (the Council of Madras), as delivered in the Court of King's Bench, on the 5th February 1780.

THE SUBJECT.

TIME now casts into the shade a proceeding which occupied at the moment a great deal of public interest and attention, viz., the arrest and imprisonment of Lord Pigot, Governor of Madras, by the majority of the Council of that settlement, in the year 1776.

On their recall to Europe by the Directors of the East India Company, a motion was made in the House of Commons for their prosecution, by the Attorney-General, for a high misdemeanour.

Admiral Pigot, the brother of Lord Pigot, being at that time a member of the House, and a most amiable man, connected in political life with the Opposition party in Parliament, an extraordinary degree of acrimony arose upon the subject, and the House of Commons came to a resolution to prosecute Messrs. Stratton, and others, in the Court of King's Bench; and an information was accordingly filed against them by the Attorney-General. They were defended by Mr Dunning, and the other leading advocates of that time, but were found guilty; and, on their being brought up to receive the judgment of the Court, Mr. Erskine, who was then only junior counsel, made the following speech in mitigation of their punishment.

The principle of the mitigation, as maintained by Mr. Erskine, may be thus shortly described: Lord Pigot, considering himself, as President of the Government of Madras, to be an integral part of it, independent of the Council, refused to put a question for decision by the Board, which the members of the Council contended it was his duty ministerially to have done; and he also unduly suspended two of them, to make up a majority in favour of his proceedings. This act of Lord Pigot was held by the majority of the Council to be a subversion and usurpation of the government, which they contended was vested in the President and Council, and not in the President only; and to vindicate the powers of the government, thus claimed to reside in them, they caused Lord Pigot to be arrested and suspended, and directed the act of the majority of Council, which Lord Pigot refused to execute, to be carried into execution. It was, of course, admitted that this act was not legally justifiable, that the defendants were properly convicted, and must, therefore, receive some punishment from the Court; but it was contended in the following speech that the Court was bound to

remember and respect the principles which governed our ancestors at the Revolution, and which had dictated so many acts of indemnity by Parliament, when persons, impelled by imminent necessity, had disobeyed the laws.

The defendants were only fined one thousand pounds, without any sentence of imprisonment.

THE SPEECH.

MY LORD,—I really do not know how to ask, or even to expect, the attention of the Court; I am sure it is no gratification to me to try your Lordship's patience on a subject so completely exhausted; I feel, besides, that the array of counsel assembled on this occasion gives an importance and solemnity to the conviction which it little deserves, and carries the air of a painful resistance of an expected punishment, which it would be a libel on the wisdom and justice of the Court to expect.

But in causes that, from their public nature, have attracted the public notice, and in which public prejudices have been industriously propagated and inflamed, it is very natural for the objects of them to feel a pleasure in seeing their actions (if they will bear a naked inspection) repeatedly stripped of the disguise with which the arts of their enemies had covered them, and to expect their counsel to be, as it were, the heralds of their innocence, even after the minds of the judges are convinced. They are apt, likewise and with some reason, to think that, in *this* stage of a prosecution, surplussage is less offensive, the degree of punishment not being reducible to a point like a legal justification, but subject to be softened and shaded away by the variety of views in which the same facts may be favourably and justly presented, both to the understanding and the heart. Such feelings, my Lord, which I more than guess are the feelings of my injured clients, must be my apology for adding anything to what my learned leaders have already, I think, unanswerably urged in their favour. It will be, however, unnecessary for me to fatigue your Lordship with a minute recapitulation of the facts; I shall confine myself to the prominent features of the cause.

The defendants are convicted of having assumed to themselves the power of the government of Madras, and with having assaulted and imprisoned Lord Pigot. I say, they are convicted of *that*, because, although I am aware that the general verdict of guilty includes, likewise, the truth of the first count of the information, which charges the obstruction of Lord Pigot in carrying into execution the specific orders of the Company, yet it is impossible that the general verdict can at all embarrass the Court in pronouncing judgment, it being notorious on the face of the evidence, first, that there were no direct or specific orders of the Company

touching the points which occasioned either the original or final differences, the Rajah of Tanjore being, before the disputes arose, even beyond the letter of the instructions, restored and secured. Secondly, that the instructions, whatever they were, or however to be constructed, were not given to the single construction of Lord Pigot, but to him and his Council, like all the other general instructions of that government.

The Company inclined that the Rajah of Tanjore should be restored without infringing the rights of the Nabob of the Carnatic; but how such restoration and security of the Rajah could, or was to, be effected without the infringement of those rights of the Nabob which were not to be violated, the Company did not leave to the single discretion of Lord Pigot, but to the determination of the ordinary powers of the government of Fort St. George, acting to the best of their understandings, responsible only, like all other magistrates and rulers, for the purity of their intentions.

It is not pretended that the Company's instructions directed the Rajah's security to be effected by the residence of a civil chief and council in Tanjore, or by any other civil establishment whatsoever: on the contrary, they disavow such appropriation of any part of the revenues of that country; *yet the resisting a civil establishment in the person of Lord Pigot's son-in-law, Mr. Russel, destined, too, by the Company for a different and incompatible service, is the specific obstruction which is the burden of the first count of the information, and which is there attempted to be brought forward as an aggravation of the assumption of the general powers of the government*; the obstruction of what was not only not ordered by the Company, but of which their orders implied, and in public council were admitted by one of Lord Pigot's adherents to imply, *a disapprobation and prohibition.*

The claims of Mr. Benfield, the subject of so much slanderous declamation without proof, or attempt of proof, and, what is more extraordinary, without even charge or accusation, are subject to the same observations: the orders to restore the Rajah to the possession of his country certainly did not express, and, if my judgment does not mislead me, could not imply, a restitution of the crops sown with the Prince's money, advanced to the inhabitants on the credit of the harvest, without which universal famine would have ensued.

Had the Nabob, indeed, seized upon Tanjore in defiance of the Company, or even without its countenance and protection, he would, no doubt, have been a *mala fide* possessor, *quoad* all transactions concerning it with the Company's servants, whatever the justice of his title to it might in reality have been; and the Company's governors, in restoring the Rajah, paying no respect to such usurped possession, would have been justifiable in telling any European who had lent his money on the security of Tanjore—

Sir, you have lent your money with your eyes open, to a person whose title you knew not to be ratified by our approbation, and we cannot, therefore, consider either his claim or yours derived from it. But when the Nabob was put into possession by the Company's troops; when that possession, so obtained, was ratified in Europe, at least, by the silence of the Company, no matter whether wisely or unwisely, justly or unjustly; and, after the Nabob had been publicly congratulated upon such possession, by the King's plenipotentiary in the presence of all the neighbouring princes in India; I confess I am at a loss to discover the *absurdity* (as it has been called) of the Nabob's pretensions; and it must be remembered, that Mr. Benfield's derivative title was not the subject of dispute, but the title of the Nabob, his principal, from whence it was derived; I am, therefore, supported by the report of the evidence, in saying, that it does not appear that the differences in Council arose, were continued, or brought to a crisis, on points where Lord Pigot had the Company's orders, either express or implied, to give any weight to his single opinion beyond the ordinary weight allotted to it by the constitution of the settlement, so as to justify the Court to consider the dissent of the majority from *his measures*, to be either a criminal resistance of the President, or a disobedience of the Company's specific or general instructions.

Thus perishes the first count of the information, even if it had been matter of charge! But much remains behind. I know it is not enough that the Company's orders were not specific touching any of the points on which the differences arose, or that they were silent touching the property of the crop of Tanjore, or that the Nabob's claim to it had the semblance, or even the reality of justice; I admit that it is not sufficient that the defendants had the largest and most liberal discretion to exercise, if that discretion should appear to have been warped by bad, corrupt, or selfish motives; I am aware, that it would be no argument to say, that the acts charged upon them were done in resistance of Lord Pigot's illegal subversion, if it could be replied upon me, and that reply be supported by evidence, that such subversive acts of Lord Pigot, though neither justifiable nor legal, were in laudable opposition to their corrupt combinations. I freely admit that, if such a case were established against me, I should be obliged to abandon their defence; because I could apply none of the great principles of government to their protection; but, if they are clear of such imputations, then I *can* and *will* apply them *all*.

My Lord, of this bad intention there is no proof; no proof did I say? there is no charge! I cannot reply to *slander* here. I will not debate the purity of the Court by fighting with the phantoms of prejudice and party, that are invisible to the sedate and sober eye of justice! If it had been a private cause, I would not have suffered my clients, as far as my advice could have influenced, to

have filed a single affidavit in support of that integrity which no complaint attached upon, and which no evidence had impeached; but, since they were bound like public victims, and cast into this furnace, we wished them to come forth pure and white; their innocence is, therefore, witnessed before your Lordships, and before the world, by their most solemn oaths; and it is surely no great boon, to ask credit for facts averred under the most sacred obligations of religion, and subject to criminal retribution *even here*, which you are bound, in the absence of proof, not only in duty as judges, but in charity as men, to believe without any oaths at all.

They have denied every corrupt motive and purpose, and every interest, directly or indirectly, with Mr. Benfield, or his claims.—“But,” says Mr. Rous, “Benfield was a man of straw set up by the *Nabob*,” be it so;—they have positively sworn that they had no interest, directly or indirectly, in the claims of the *Nabob himself*; no interest, directly or indirectly, in the property of the crop of Tanjore; no interest, directly or indirectly, beyond their duty, in the preference of Colonel Stuart’s appointment to Mr. Russel’s; nor any interest, direct or indirect, in any one act which is the subject of the prosecution, or which can, by the most collateral direction, be brought to bear upon it. Such are the affidavits; and if they be defective, the defect is in us. They protested their innocence to us, their counsel, and, telling us that there was no form in which language could convey asseverations of the purity of their motives, which they could not with a safe conscience subscribe to, they left it to us to frame them in terms to exclude all evasion.

But *circumstances* come in aid of their credit stronger than all oaths: men may swear falsely; men may be perjured, though a court of justice cannot presume it; but human nature cannot be perjured. They did not do the very thing, when they got the government, for which they are supposed to have usurped it. The history of the world does not afford an instance of men wading through guilt for a purpose which, when within their grasp, they never seized or looked that way it lay.

When Mr. Benfield first laid his claims before the Board, Lord Pigot was absent in Tanjore, and Mr. Stratton was the legal governor during his absence, who might therefore have, in strict regularity, proceeded to the discussion of them; *but he referred them back to Lord Pigot, and postponed that discussion till his return*; when, on that discussion, they were declared valid by a legal majority, they neither forced them, nor threatened to force them on the Rajah, but only recommended it to him to do justice, leaving the time and the manner to himself; and, when at last they assumed the government, they did not change their tone with their power; the Rajah was left unrestrained as before, and, *at this hour*, the claims remain in the same situation in which they stood at the commencement of the disputes; neither the Nabob nor Mr.

Benfield have derived the smallest advantage or support from the revolution in the government.

This puts an end to all discussion of Indian politics, which have been artfully introduced to puzzle and perplex the simple merits of this cause; I have no more to do with the first or second *Tanjore* war, than with the first or second *Carthaginian* war; I am sorry, however, my absence yesterday in the House of Commons prevented me from hearing the history of them, because, I am told, Mr. Rous spoke with great ability, and I am convinced from what I know of his upright temper, with a zeal, that, for the moment, justified what he said to his own bosom; but, if I am not misinformed, his zeal was his only brief; his imagination and resentment spurned the fetters both of fact and accusation, and his acquaintance with Indian affairs enabled him to give a variety to the cause by plausible circumstances beyond the reach of vulgar and ignorant malice to invent. It was calculated to do much mischief, for it was too long to be remembered, and too unintelligible to be refuted; yet I am contented to demand judgment on my clients on Mr. Rous's terms: he tells your Lordship, that their intentions cannot be known till that time when the secrets of all human hearts shall be revealed, and then, in the very same breath, he calls for a punishment as if they were revealed already. It is a new, ingenious, and summary mode of proceeding—*festinum remedium*, an assize of conscience. If it should become the practice, which, from the weight of my learned friend, I have no manner of doubt it will, we shall hear such addresses to juries in criminal courts as this:—Gentlemen, I am counsel for the prosecution, and I must be candid enough to admit that the charge is not proved against the defendants; there is certainly no legal evidence before you to entitle the Crown to your verdict; but, as there is little reason to doubt that they are guilty, and as this deficiency in the evidence will probably be supplied at the day of judgment, you are well warranted in convicting them; and if, when the day of judgment comes, both you and I should turn out to be mistaken, they may move for a new trial.

This was the *general* argument of guilt; and, in the *particulars*, the reasoning was equally close and logical. How, says Mr. Rous, can it be believed that the *Tanjore* crop was not the corrupt foundation of the defendants' conduct, when it appears from day to day, on the face of all the consultations, as the single object of dispute? That it was the object of dispute, I shall, for argument's sake, admit; but does Mr. Rous's conclusion follow from the admission of his premises? I will tell him why it does not; it is so very plain a reason, that, when he hears it, he will be astonished he did not discover it himself. Let me remind him, then, that all the inferences which connections with the *Nabob* so amply supplied on the *one hand*, connections with the *Rajah* would as amply have supplied on the *other*. If the *Tanjore* crop was the bone of contention,

the Rajah, by *keeping it*, had surely the same opportunity of gratitude to his adherents that the Nabob had to his by *snatching it from him*. The appointment of Mr. Russel to the residency of Tanjore—Mr. Russel, the friend, the confidant, the son-in-law of Lord Pigot—was surely as good a butt for insinuation as *Colonel Stuart*, for the *whole Council*. The ball might, therefore, have been thrown back with redoubled violence; and I need not remind the Court, that the cause was conducted on our part by a gentleman whose powers of throwing it back it would be folly in me to speak of; but he nobly disdained it; he said he would not hire out his talents to scatter insinuation and abuse, when the administration of right and justice did not require it; and his clients, while they received the full, faithful, and energetic exercise of his great abilities, admired and applauded the delicate manly rectitude of his conduct; they felt that their cause derived a dignity and a security from the MAN greater than the *advocate*, and even than *such an advocate*, could bestow.

I shall follow the example of Mr. Dunning. God forbid, my Lord, that I should insult the ashes of a brave man, who, in other respects, deserved well of his country; but let me remind the gentlemen on the other side, that the honour of the LIVING is as sacred a call on humanity and justice as the memory of the DEAD.

My Lord, the case, thus stripped of the false colours thrown upon it by party defamation, stands upon plain and simple principles, and I shall, therefore, discuss it in the same arrangement which your Lordship pursued in summing up the evidence to the jury at the trial, only substituting alleviation for justification.

First, In whom did the ordinary powers of the government of Madras reside.

Secondly, What acts were done by Lord Pigot subversive of that government?

Thirdly, What degree of criminality belongs to the confessedly illegal act of the defendants, in assuming to themselves the whole powers of the government, *so subverted*? I say, *so subverted*; for I must keep it constantly in the eye of the Court that the government was subverted, and was admitted by your Lordship, at the trial, to have been subverted *by Lord Pigot*, before it was assumed by *the majority of the Council*.

First, then, in whom did the government of Fort St. George reside? And, in deciding this question, it will not be necessary to go, as some have done, into the general principles of government, or to compare the deputation of a company of merchants with great political governments, either ancient or modern. The East India Company, being incorporated by Act of Parliament, derived an authority from their charter of incorporation, to constitute inferior governments, dependent on them for the purposes of

managing their concerns in those distant parts:—had the Company, at the time the charter was granted, been such an immense and powerful body as it has since become from the trade and prosperity of the empire, it might have happened that the forms of these governments would have been accurately chalked out by Parliament, and been made part of the charter; in which case, the charter itself would have been the only place to have resorted to for the solution of any question respecting the powers of such governments, because the Company, by the general law of all corporations, could have made no by-laws, or standing orders, repugnant to it; but, on the other hand, the charter having left them at liberty in this instance, and not having prescribed constitutions for their territorial governments in India, there can be no possible place to resort to for the solution of such questions but to the commissions of government granted by the Company; their standing orders, which may be considered as fundamental constitutions; and such explanatory instructions as they may, from time to time, have transmitted to their servants for the regulation of their conduct;—by these, and these alone, must every dispute arising in the governments of India be determined, except such as fall within the cognizance of the Act 13 George III., for the regulation of the Company's affairs, as well in India as in Europe.

Again, then, as to the commission of government, where the clause on which they build the most is made to run thus:—"And to the end that he might be the better enabled to manage all the affairs of them, the said Company, they appointed certain persons, thereinnamed, to be of their Council at Fort St. George." These words would certainly imply the President to be an integral and substantive part distinct from the Council; but, unfortunately, no such words are contained in the commission of government, which speaks a very different language, almost in itself conclusive against the proposition they wish to establish. The words are—"And to the end that the said George Lord Pigot might be the better enabled to manage all the affairs of us, the said Company, we do constitute and ordain George Stratton, Esq., to be SECOND in our Council of Fort St. George, to wit, TO BE NEXT IN THE COUNCIL after our said President George Lord Pigot." It is impossible for the English language more plainly to mark out the President to be merely *the first in Council*, and not an integral substantive part, *assisted by a Council*; for, in such case, Mr. Stratton, the senior councillor, would, it is apprehended, be called the *first in Council*, instead of the *second* in Council, to wit, next after the President; and this clause in the commission, so explained, not only goes far by itself to resist the claim of independence in the President, but takes off from the ambiguity and uncertainty which would otherwise cloud the construction of the clause that follows, viz:—"And we do hereby give and grant unto our said

President and Governor, George Lord Pigot, *and to our Council aforementioned, or the major part of them, full power and authority,*" &c. The President and Council being here named distinctly, the word *them*, without the foregoing clause, might seem to constitute the President an integral part, and separate from the Council; but the President, having been before *constructively* named as the *first in Council*; Mr. Stratton, though the senior councillor, being expressly named the *second*; it is plain the word *them* signifies *the majority of such Council, of which the President is the first*, and, who is named distinctly, not only by way of pre-eminence, but because all public bodies are called and described by their corporate names, and all their acts witnessed by their common seals, whatever their internal constitutions may be. No heads of corporations have, by the common law of England, any negative on the proceedings of the other constituent parts, unless by express provision in their charters; yet all their powers are given to them, and exercised by them, in their corporate names, which ever makes the head a party, although he may be dissentient from the act that receives authority from his name.

The standing orders of the Company, published in 1687 and 1702, which may be considered as fundamental constitutions, are plain and unequivocal; they enjoin, "That all their affairs shall be transacted in COUNCIL, and ordered and managed as the MAJORITY OF THE COUNCIL shall determine, and not otherwise, on any pretence whatsoever." And again, "That whatever is agreed on by the MAJORITY shall be the order by which each one is to act; and every individual person, *even the dissenters themselves*, are to perform their parts in the prosecution thereof."

The agreement of the majority being denominated an ORDER, shows as clearly as language can do that obedience is expected to their determination; and it is equally plain, that no constituent member of that government can frustrate or counteract such order, since each individual, *even the dissenters themselves*, are commanded to act in conformity to it, and to perform their parts in the prosecution thereof. In speaking to dispassionate men, it is almost needless to add any arguments to show that the President's claim to refuse to put a question, adopted by a majority of Council, stands upon the very same grounds as his claim to a negative on their proceedings, and that, if the first be overturned, the second must fall along with it; for if he be not an integral part of the government, and his concurrence be consequently not necessary to constitute an act of it, then his office as President *with respect to putting questions*, must necessarily be only ministerial, and he cannot obstruct the proceedings by refusing to put them; for, if he could, his power would be equal in effect to that of an integral part; and it would be a strange solecism indeed, if, at the same time that all the affairs of the government were to be managed.

and ordered by the opinions of a majority, the President could prevent such opinions from ever being collected; and, at the same time that their acts would bind him, could prevent such acts from ever taking place. But it is altogether unnecessary to explain, by argument and inference, that which the Company, who are certainly the best judges of their own meaning, have explained in absolute and unequivocal terms by their instructions sent by Mr. Whitehill to Madras, explanatory of the new commission, by which they expressly declare the government to be in the *major part of the Council*, giving the President, or the senior councillor in his absence, a casting vote, and directing *that every question proposed in writing by any member of Council shall be put by the Governor, or, in his absence, by the senior member acting as President for the time being; and that every question carried by a majority shall be deemed the act of the President and Council.* Indeed, the uniform determinations of the Directors on every occasion where this question has been referred to them, have been in favour of the majority of council; even so late as the 21st of April 1777, *subsequent to the disturbances at Madras*, it will be found upon their records to have been resolved by ballot, "*That the powers contended for and assumed by Lord Pigot, are neither known in the constitution of the Company, nor authorised by charter, nor warranted by any orders or instructions of the Court of Directors.*" It is clear, therefore, beyond all controversy, that the President and Council were, at all times, bound and concluded by the decision of the majority, and that it was his duty to put every question proposed by any member of the board.

Had these regulations been made part of the *new* commission, they might have been considered as a *new* establishment, and not as a recognition of the *former* government; and consequently such regulations subsequent to the disturbances could be no protection for the majority acting under the *former* commission; but the caution of the East India Company, to exclude the possibility of such a construction, is most striking and remarkable: sitting down to frame a new commission under the immediate pressure of the difficulties that had arisen from the equivocal expressions of the former; they, nevertheless, adopt and preserve the very same words in all the parts on which the dispute arose, the two commissions differing in nothing except in the special preamble restoring Lord Pigot; and the object of this caution is self-evident, because, if, instead of thus preserving the same form, and sending out collateral instructions to explain it, they had rendered the new commission more precise and unequivocal by *new modes of expression*, it would have carried the appearance of a *new* establishment of what the government should *in future be*, and not as a recognition and definition of what it *always had been*; but by thus using the same form of commission, and accompanying it with explanatory regula-

tions, they, beyond all dispute, pronounced the former commission always to have implied what they expressly declare the latter to be, as it is impossible to suppose that the Company would make use of the same form of words to express delegations of authority diametrically opposite to each other. But, taking it for argument's sake to be a new establishment rather than a recognition, still it is a strong protection to the defendants. If the question, indeed, was concerning the regularity of an act done by the majority, without the President, coming before the Court by a person claiming a franchise under it, or in any other *civil* shape where the constitution of the government was in issue, my argument, I admit, would not hold; the Court would certainly, *in such case*, be obliged to confine itself strictly to the commission of government, and such explanatory constitutions as were precedent to the act, the regularity of which was the subject of discussion; but it is very different when men are prosecuted *criminally* for subverting a constitution, and abusing delegated authority: they are not to be punished, I trust, for the obscurity of their employers' commissions, if they have been fortunate enough, notwithstanding such obscurity, to construe them as they were intended by their authors: if their employers declare, even after an act done, *This is what we meant should be our government*, that ought to be sufficient to sanction previous acts that correspond with such declarations, more especially declarations made on the spur of the occasion which such previous acts had produced; for otherwise this monstrous supposition must be admitted, viz., That the Company had enlarged the power of their servants, because they had, in defiance of their orders, assumed them when they had them not; whereas, the reasonable construction of the Company's subsequent proceeding is this: *It is necessary that our Council on the President's refusing to perform his duty, should have such powers of acting WITHOUT HIM, as they have assumed in the late emergency; the obscurity of our commissions and instructions has afforded a pretence of resistance, which has obliged our servants either to surrender the spirit of their trusts, or to violate the form; to prevent such disputes in future we do that, HITHERTO UNKNOWN; we make a regular form of government, and at the same time, prescribe a rule of action in case it should not act up to the end of its present institution, to prevent an exercise of discretion always, if possible, to be avoided in every government, but more especially in such as are subordinate.* Therefore, my Lord, whether the late instructions be considered as explanatory or enacting, they ought to be a protection to the defendants *in a criminal court*, unless when their employers are the prosecutors. Neither Parliament nor the Crown ought to interfere; but, as they have done it, no evidence ought to have convicted them of assuming the powers of government, and obstructing the Company's service, but the evidence of the Directors of that Company under whom they acted. They ought not to be

judged by blind records and parchments, *whilst the authors of them are at hand to explain them.* It is a shocking absurdity to see men convicted of abusing trusts when the persons who gave them are neither prosecutors nor witnesses against them.

The ordinary powers of the government of Madras being thus proved to have resided in the majority of the Council, it now only remains to show, by a short state of the evidence, the necessity which impelled the extraordinary and otherwise unwarrantable exercise of such powers in suspending and imprisoning Lord Pigot ; for they once more enter a protest against being thought to have assumed and exercised such power as incident to their commission while the government subsisted. It is their business to show that, as long as the government continued to subsist, they faithfully acted their parts in it ; and that it was not till after a total subversion of it by an arbitrary suspension of the governing powers, that they asserted their own rights, and restored the government by resuming them.

On the 8th of July, Lord Pigot refused, as President, to *put a question* to the Board (upon the regular motion of a member), for rescinding a resolution before entered into. This refusal left the majority no choice between an absolute surrender of their trusts and an exercise of them without his ministerial assistance ; there was no other alternative *in the absence of a superior coercive authority, to compel him to a specific performance of his duty* ; but they proceeded no further than the necessity justified ; they did not extend the irregularity (if any there was) beyond the political urgency of the occasion.—Although their constitutional rights were infringed by the President's claim, they formed no plan for their general vindication ; but contented themselves with declaring on that particular occasion, that, as the government resided *in them*, the President ought not to refuse putting the question, and that the resolution ought to be rescinded.

When the President again refused to put the question in the month following, for taking into consideration the draughts of instructions to Colonel Stuart (which was the immediate cause of all the disturbances that followed), they again preserved the same moderation, and never dreamt of any further vindication of their authority, thus usurped, than should become absolutely necessary for the performance of the trusts delegated to them by the Company, which they considered it to be treachery to desert. They lamented the necessity of departing even from form ; and, therefore, although the President's resolution to emancipate himself from their constitutional control was avowed upon the public minutes of the consultations, they first adjourned without coming to any resolution at all, in hopes of obtaining formality and regularity to their proceedings by the President's concurrence :—disappointed in that hope by his persevering to refuse, and driven to the necessity of

either surrendering their legal authority or of devising some other means of exercising it without his personal concurrence, *having (as before observed) no process to compel him to give it*, they passed a vote approving of the instructions, and wrote a letter to Colonel Harper, containing orders to deliver the command to Colonel Stuart; but they did not proceed to sign it at that consultation, still hoping, by an adjournment, to gain Lord Pigot's sanction to acts legal in all points by the constitution of the government, except, perhaps, in wanting that *form* which it was his duty to give them.

The use which Lord Pigot made of this slowness of the majority to vindicate the divided rights and spirit of the government, by a departure from even its undecided forms, notwithstanding the political necessity which arose singly from his own illegal refusal, is very luckily recorded by one of his lordship's particular friends in Council, and a party to the transaction, as it would have been, otherwise, too much to have expected full credit to it from the most impartial mind.

"It had been discussed," says Mr. Dalrymple, "before the Council met, what measures could be taken to support the government established by the Company, in case the majority should still persist in their resolution to come to no compromise or reference of the matter in question, to the decision of the Court of Directors, but to carry things to extremity. One mode occurred to Lord Pigot, viz., by putting Colonel Stuart in arrest if he obeyed an order without the Governor's concurrence. To this many objections arose. Colonel Stuart might contrive to receive the orders *without* the garrison, and, consequently, by the new military regulations, not be liable to the Governor's arrest: if he *was* arrested, the majority would, of course, refuse to issue a warrant for a court-martial, and confusion and disgrace must be the consequence.

"The only expedient that occurred to any of us was, to ground a charge in case of making their declaration in the name of the Council, instead of the President and Council; but here an apprehension arose, that they would see this impropriety, and express their order, not in the name of the Council, as they had hinted, but in the name of the President and Council, maintaining that the majority constituted the efficient Board of President and Council. In this case, we could devise no measure to be pursued consistent with the rules of the service; but Lord Pigot said there was no fear of this, as he insisted the Secretary would not dare to issue any order in his name when he forbade it. It was impossible to know whether Sir Robert Fletcher would attend or not; it was necessary to have everything prepared, that nothing might be to be done in Council; the Company's orders required the charge to be in writing; *the Governor, therefore, had in his pocket charges prepared for every probable contingency*, whether they began at the eldest or the youngest, and whether the form was an order from themselves

or an order to the Secretary ; and whether Sir Robert Fletcher was present or not. It was agreed that the first of us to whom the paper was presented for signing should immediately hand it to the President, who was then to produce the charge ; the standing orders directing that members against whom a charge is made should have no seat, the members charged were, of course, deprived of their votes. As our ideas went no further than relieving the Governor from the compulsion the majority wanted to lay him under, it was determined to suspend no more than the necessity of the circumstance required."

With this snare laid for them during the interval of that adjournment *which their moderation had led them to*, the Council met on the 22d of August, and, after having recorded their dissent from the President's illegal claim, to a negative on their proceedings, by refusing to perform his part in the prosecution of them (though strictly enjoined thereto by the standing orders of the Company), and in which refusal he still obstinately persisted, they entered a minute, declaring it as their opinion that the resolution of the Council should be carried into execution without further delay, and that the instructions to Colonel Stuart, and the letter to Colonel Harper, should be signed by the Secretary by order of Council.

This minute was regularly signed by a majority, and the President having again positively refused his concurrence, they prepared a letter to Mr. Secretary Sullivan, approving of the instructions to Colonel Stuart, and the letter to Lieutenant-Colonel Harper.

The letter thus written, *in the name of the majority*, and under their most public and avowed auspices, it was the immediate purpose of *all of them* to have signed in pursuance of the minute they had just before delivered in, expressive of their authority to that purpose ; but the President, according to the *ingenious* plan pre-concerted during the adjournment, snatched the paper from Mr. Brooke after he and Mr. Stratton had signed it, before the rest of the majority could put their names to it, and pulling a written accusation out of his pocket, charged them as being guilty of an act subversive of the government ; put the question of suspension on both at once, and ordered the Secretary to take neither of their votes, which, according to Mr. Dalrymple's *economical* scheme of illegality, exactly got rid of the majority, by his own (*the accuser's*) casting vote.

The weakness and absurdity of the *principle* (if it deserves the name) on which this suspension was founded, creates a difficulty in seriously exposing it by argument ; yet, as it produced all the consequences that followed, I cannot dismiss it without the following remarks :—

That was a gross violation of the constitution of the government, even admitting Lord Pigot to have been that integral part of it which he assumed to be, as the establishment of that claim

could only have given him a negative on the proceedings of a majority, but never could have enabled him to fabricate one so as to do positive acts without one; the sudden charge and suspension of Messrs. Stratton and Brooke, and breaking the majority by putting the question on both at once, would therefore have been irregular, even supposing the concurrence of the majority to the act which constituted the charge against them to have been unknown to Lord Pigot and the minority who voted with him: but when their concurrence was perfectly known; when the majority of the Board had just before publicly delivered in a minute expressive of their right to authorise the Secretary to sign the order, if the President refused to do it; when the order was avowedly drawn out in pursuance of that minute, which made the whole *one act*, and was in the regular course of signing by the majority, who had just before declared their authority to sign it; the snatching the paper, under such circumstances, while unfinished, and arraigning those who had already signed it under the auspices of the majority, as being guilty of an act subversive of the government lodged in that majority, and turning it into a minority by excluding the votes of the parties charged, was a trick upon the governing powers which they could neither have submitted to with honour to themselves or duty to their employers.

Such a power, however, Lord Pigot assumed over the government of Fort St. George, by converting an act of the majority, rendered necessary by his refusal to do his duty, into a criminal charge against two members acting under their authority, and by a device too shallow to impose on the meanest understanding, cut them off from acting as part of that majority, by which the powers of the government were subverted, and passed away from them while they were in the very act of saving them from subversion.

It is unnecessary to say that they were neither called upon in duty, nor even authorised, had they been willing, to attend the summons of a Board so constituted by the foulest usurpation; a Board at which they must either have sacrificed their consciences and judgments, or become the vain opposers of measures destructive to the interests of their employers; they therefore assembled, and answered the illegal summons by a public protest against the usurped authority by which it issued. To this Council, assembled for the single purpose of sending such protest, they did not, indeed, summon the subverters of the government against whom it was levelled; affairs were arrived at too dangerous a crisis to sacrifice substance to forms, which it was impossible should have been regarded. Lord Pigot and his associates, on receiving the protest against the proceedings of the 22d of August, completed the subversion of the constitution, by the suspension of the rest of the majority of the Council, and ordered Sir Robert Fletcher, the commander-in-chief, to be put under arrest, to be tried by a court-

martial, for asserting the rights of the *civil* government as a member of the Council. This is positively sworn to have been done by Lord Pigot before their assumption of the government. Here then was a crisis in which it was necessary to act with decision, and, in asserting their rights by civil authority, to save the impending consequences of tumult and blood.—The period of temporising was past, and there was no doubt of what it was their duty to do. Charged with the powers of the government, they could not surrender them with honour, and it was impossible to maintain them with safety or effect while their legal authority was treated as usurpation and rebellion. They, therefore, held a Council, and agreed that the fortress and garrison should be in their hands, and under their command, as the legal representatives of the Company, and, as there was everything to dread from the intemperance of Lord Pigot's disposition, they, at the same time, authorised Colonel Stuart to arrest his person, if he thought it necessary to preserve the peace of the settlement. Colonel Stuart *did* think it necessary, and his person was accordingly arrested: but, during his necessary confinement, he was treated with every mark of tenderness and respect.

Such, my Lord, is the case—and it is much to the honour of the defendants that not a single fact appeared, or was attempted to be made appear, at the trial, that did not stand avowed upon the face of their public proceedings; I say, literally none; for I will not wheel into Court that miserable post-chaise, nor its flogged postillion, the only living birth of this mountain which has been two years in its labour; everything, and the reason and motive of everything, appeared, and still appear, to speak and plead for themselves. No cabals—no private meetings—no coming prepared for all possible events—no secret manufacture of charges—no tricks to overcome majorities—but everything fair, open, and manly, to be judged of by the justice of their employers, the equity of their country, and the candour and humanity of the civilised world. As long as the government subsisted, their parts appear to have been acted in it with regularity and fidelity, nor was it till after a total subversion of it, by the arbitrary suspension of the governing powers, *and in the absence of all superior visitation*, that they asserted their own rights, and restored the government by reassuming them. The powers, so assumed, appear to have been exercised with dignity and moderation; the necessary restraint of Lord Pigot's person was not tainted with any unnecessary rigour, but alleviated (notwithstanding the dangerous folly of his friends) with every enlargement of intercourse, and every token of respect; the most jealous disinterestedness was observed by Mr. Stratton in not receiving even the lawful profits of magistracy and the temporary authority, thus exerted for the benefit of their employers, was resigned back into their hands with cheerfulness and sub-

mission,—resigned, not like rapacious usurpers, with exhausted revenues, disordered dependencies, and distracted councils, but with such large investments, and such harmonious dispositions, as have been hitherto unknown in the Company's affairs in any settlement in the East.

Your Lordships are, therefore, to decide this day on a question never before decided, or even agitated, in any English court of justice; you are to decide upon the merits of A REVOLUTION—which, as all revolutions must be, was contrary to established law, and not legally to be justified. The only revolutions which have happened in this land have been when Heaven was the only court of appeal, because their authors had no human superiors; and so rapidly has this little island branched itself out into a great empire, that I believe it has never occurred that any disorder in any of its foreign *civil* dependencies has been the subject of judicial inquiry; but, I apprehend that, since the empire has thus expanded itself, and established governments *at distances inaccessible to its own ordinary visitation and superintendence*, all such subordinate governments, all political emanations from them, must be regulated by the same spirit and principles which animate and direct the parent state. Human laws neither do nor can make provision for cases which suppose the governments they establish to fall off from the ends of their institutions; and, therefore, on such extraordinary emergencies, when *forms* can no longer operate, from the absence of a superior power to compel their operation, it strikes me to be the duty of the component parts of such governments to take such steps as will best enable them to preserve the *spirit* of their trusts; in no event whatsoever to surrender them, or submit to their subversion; and, by considering themselves as an epitome of the constitution of their country, to keep in mind the principles by which that constitution has been preserved, and on which it is established.

These are surely fair premises to argue from, when the question is not *technical justification*, but *palliation* and *excuse*. The members of the Council, in the majority of which the efficient government of Madras resided, were certainly as deeply responsible to the India Company in conscience, and on every principle of society, for the preservation of *its* constitution from an undue extension of Lord Pigot's power, as the other component parts of *this* government are answerable to the people of this country for keeping the King's prerogative within its legal limits; there can be no difference but that which I have stated, namely, that the one is subordinate, and the other supreme. But as, in the total absence of the superior power, subordination to it can only operate by an appeal to it for the ratification or annulment of acts already done, and not for directions what to do (otherwise, on every emergency, government must entirely cease), I trust it is not a strained proposi-

tion to assert, that there can be no better rule of action, when subordinate rulers must act somehow, owing to their distance from the fountain of authority, than the history of similar emergencies in the government of their country, of which they are a type and an emanation.

Now, my Lord, I believe there is no doctrine more exploded, or more repugnant to the spirit of the British government, because the Revolution is built upon its ruin, than that there must be an imminent political necessity, analogous to natural necessity, to justify the resistance of the other component parts of the government, if one steps out of its delegation, and subverts the constitution. I am not speaking of technical justification. It would be nonsense to speak of law and a revolution in the same sentence. But I say, the British constitution, which is a government of law, knows no greater state necessity than the inviolate preservation of the spirit of a public trust from subversion or encroachment, no matter whether the country would fall into anarchy or blood, if such subversion or encroachment were suffered to pass unresisted. A good Whig would swoon to hear such a qualification of resistance, even of the resistance of an integral part of legislation, much less of a part merely ministerial, which, in all governments, must be subordinate to the legislature, wherever it resides. Such a state necessity, analogous to natural necessity, may be necessary to call out a private man, but is not at all applicable to the powers of a government. The defendants did not act as *private* men, but as *governing powers*; for, although they were not, technically speaking, the government, when not assembled by the President, yet they were in the spirit of law, and on every principle of human society, the rulers of the settlement. The information charges the act as done by them in the public capacity of members of the Council, in the majority of which the government did reside; and their act must, therefore, be taken to be a public act, for the preservation of their delegated trusts from subversion by Lord Pigot, which, on the true principle of British government, is sufficient to render resistance meritorious, though not legal.

Where was the imminent state necessity at the Revolution in this country? King James suspended and dispensed with the laws. What laws? Penal laws against both Papists and Protestant Dissenters. Would England have fallen into confusion and blood if the persecuted Papist had been suffered publicly to humbug himself with the mystery of transubstantiation, and the Independent to say his prayers without the mediation of a visible church? Parliament, on the contrary, immediately after the Revolution, repealed many of those intolerant laws, with a preamble to the Act that abolished them, almost copied *verbatim* from the preamble of the proclamation by which the King suspended them; yet that suspension (although King James was, I.

trust, something more of an integral part of this government than Lord Pigot was of that of Madras) most justly cost him the crown of these kingdoms. What was the principle of the Revolution? I hope it is well known, understood, and revered by all good men. The principle was, that the trustees of the people were not to suffer an infringement of the constitution, *whether for good or for evil*. All tyrants are plausible and cunning enough to give their encroachments the show of public good. Our ancestors were not to surrender the *spirit* of their trusts, though at the expense of the *form*, and though urged by no imminent state necessity to defend them; no other, at least, than that which I call, and which the constitution has ever since called, the first and most imminent of all state necessities, *the inviolate preservation of delegated trusts from usurpation and subversion*. This is the soul of the British government. It is the very being of every human institution which deserves the name of government; without it, the most perfect model of society is a painful and laborious work, which a madman, or a fool, may, in a moment, kick down and destroy.

Now, why does not the principle apply *HERE*? Why may not inferiors, in the absence of the superior, *justly*, though not legally, at all events without sanguinary punishment, do by a *temporary act to be annulled, or ratified, by such superior*, that which the superior would do finally where there is no appeal at all? Will you punish men who were obliged, from their distance from the fountain of authority, to act for themselves, only for having, at all events, refused to surrender their trusts?—only for having saved the government committed to their charge from subversion?—only for having acted as it was the chief glory of our ancestors to have acted? The similitude does not, to be sure, hold throughout; but all the difference is in *our* favour; *our* act was not peremptory and final, but temporary and submissive to annulment; nor is the president of a council equal only to each other individual in it, with an office merely ministerial, to be compared with the condensed executive majesty of this great kingly government with a negative in legislation.

The majority of the Council was the efficient government of Madras, or, in other words, the legislature of the settlement, whose decisions the Company directed should be the order by which each one was to act, without giving any negative in legislation to the President, whose office was consequently (as I have before said) ministerial. This ministerial office he not only refused to perform, but assumed to himself in effect the whole government by dissolving a majority against him. Let me put this plain question to the Court, Ought such arbitrary, illegal dissolution to have been submitted to? Ought the majority, which was, in fact, the whole government in substance, spirit, and effect, though not in regular form, to have suffered itself to be thus crumbled to pieces and

destroyed? Was there, in such a case, any safe medium between suffering both spirit and form to go out together, and thus sacrificing the form to preserve the spirit? And could the powers of the government have been assumed or exercised without bloodshed if Lord Pigot had been left at large? I appeal to your Lordships whether human ingenuity could have devised a *middle road* in the absence of all superior control? Ought they to have acquiesced, and waited for the sentence of the Directors, and, on his motion, played at shuttlecock with their trusts across the globe, by referring back questions to Europe which they were sent out to Asia to decide? Where representatives *doubt* what are the wishes of their constituents, it may be proper to make such appeals; but if they were subject to punishment for not consenting to them, whenever one of their body proposed them, government would be a mere mockery. It would be in the power of the President, whenever he pleased, to cripple all the proceedings of the Council. It puts me in mind of the embargo once laid upon corn by the Crown during the recess of Parliament, which was said, in a great assembly, to be but forty days' tyranny at the outside; and it equally reminds me of the celebrated constitutional reply which was made on that occasion, which it would be indelicate for me to cite here, but which, I trust, your Lordship has not forgotten.*

This would have been not only forty days' tyranny at the outside, but four hundred days' tyranny at the inside. It would have been a base surrender of their trusts, and a cowardly compromising conduct unworthy of magistracy.

But the defendants are, notwithstanding all this, CONVICTED; surely, then, either the jury or I mistake. If what I have advanced be sound or reasonable in principle, the verdict must be unjust. By no means. All I have said is compatible with the verdict. Had I been on the jury, I should have found them guilty; but had I been in the House of Commons, I would have given my voice against the prosecution. CONVICTION! Good God! how could I doubt of conviction when I know that our patriot ancestors, who assisted in bringing about the glorious Revolution, could not have stood justified in this Court, though King William sat on the throne, but must have stood self-convicted criminals without a plea to offer in their defence, had not Parliament protected them by Acts of indemnity!

Nothing that I have said could have been uttered without folly to a jury. It could not have been uttered with less folly to your Lordships, sitting in judgment on this case, on a *special verdict*. They are not arguments of *law*; they are arguments of *State*, and the State ought to have heard them before it awarded the prosecution; but, having awarded it, *your Lordships now sit in their place to do justice*. If the law, indeed, had prescribed a *specific*

* Lord Mansfield's speech in the House of Lords against the dispensing power.

punishment to the fact charged, the judgment of the law must have followed the conviction of the *fact*, and your Lordship could not have mitigated the sentence. They could only have sued to the state for indemnity. It would, in that case, have been the sentence of the law, not of the judge. But it is not so here. A judge, deciding on a misdemeanour, is bound in conscience, in the silence of law, not to allot a punishment beyond his opinion of what the law, in its distributive justice, would have specifically allotted.

My Lord, if these arguments, drawn from a reflection on the principles of society in general, and of our own government in particular, should, from their uncommonness in a court of justice, fail to make that immediate and decided impression which their justice would otherwise ensure to them, I beseech your Lordship to call to mind that the defendants, who stand here for judgment, stand before you for acts done as the rulers of a valuable, immensely extended, and important country, so placed at the very extremity of the world that the earth itself travels round her orbit in a shorter time than the Eastern deputy can hear the voice of the European superior; a country surrounded, not only with nations which policy, but which nature—violated nature!—has made our enemies, and where government must, therefore, be always on the watch and in full vigour to maintain dominion over superior numbers by superior policy. The conduct of men in such situations ought not surely to be measured on the narrow scale of municipal law. *Their* acts must not be judged of like the acts of a little corporation within the reach of a mandamus, or of the executive strength of the state. I cannot, indeed, help borrowing an expression from a most excellent and eloquent person, when the conduct of one of our colony governments was, like this, rather hastily arraigned in Parliament. “I am not ripe,” said a member of the House of Commons, “to pass sentence on the gravest public bodies, intrusted with magistracies of great weight and authority, and charged with the safety of their fellow-citizens on the very same title that I am; I really think, that for wise minds this is not judicious; for sober minds, not decent; for minds tinged with humanity, not mild and merciful.” Who can refuse his assent to such admirable, manly sentiments? What, indeed, can be so repugnant to humanity, sound policy, decency, or justice, as to punish public men, acting in extremities not provided for by positive institution, without a corrupt motive proved, or even charged upon them? I repeat the words again, that every man’s conscience may *force* him to follow me—*without a corrupt motive proved or even charged upon them.*

Yet it has been said, that PUBLIC EXAMPLE ought to weigh heavily with the Court in pronouncing judgment. I think so too. It ought to weigh heavily indeed; but all its weight ought to be placed in the saving, not in the vindictive scale. PUBLIC EXAMPLE requires that men should be secure in the exercise of the great *public*

duties they owe to magistracy, which are paramount to the obligations of obedience they owe to the laws as *private* men. PUBLIC EXAMPLE requires that no magistrate should be punished for an error in judgment, even in the common course of his duty, which he ought to know, and for which there is a certain rule; much less for an act like this, in which he must either do wrong by seizing the trust of another, or do wrong by surrendering his own. PUBLIC EXAMPLE requires that a magistrate should stand or fall by his HEART;—that is the only part of a magistrate vulnerable in law in every civilised country in the world. WHO HAS WOUNDED THE DEFENDANTS THERE? Even in this fertile age of perjury, where oaths may be had cheap, and where false oaths might be safe from the distance of refutation, no one champion of falsehood has stood forth, but the whole evidence was read out of a book *printed by the defendants themselves, for the inspection of all mankind.*

What, then, has produced this virulence of prosecution in a country so famed for the humanity of its inhabitants, and the mildness of its laws? *The death of Lord Pigot during the revolution in the government?* Strange, that malice should conjure up so improbable an insinuation as that the defendants were interested in that unfortunate event; no event, indeed, could be to them more truly unfortunate. If Lord Pigot had lived to return to England, this prosecution had never been. His guilt and his popularity, gained by other acts than these, would have been the best protection for THEIR friendless innocence. Lord Pigot, besides many connections in this country, had a brother, who has, and who deserves to have, many friends in it. I can judge of the zeal of his friends from the respect and friendship I feel for him myself—a zeal which might have misled *me*, as it has many better and wiser than *me*, if my professional duty had not led me to an early opportunity of correcting prejudice by truth. Indeed, some of the darkest and most dangerous prejudices of men arise from the most honourable principles of the mind. When prejudices are caught up from bad passions, the worst of men feel intervals of remorse to soften and disperse them; but when they arise from a generous though mistaken source, they are hugged closer to the bosom, and the kindest and most compassionate natures feel a pleasure in fostering a blind and unjust resentment. This is the reason that the defendants have not met with that protection from many which their meritorious public conduct entitled them to, and which has given rise to a cabal against them so unworthy the legislature of an enlightened people—a cabal which would stand forth as a striking blot upon its justice—if it were not kept in countenance by a happy uniformity of proceeding, as this falling country can well witness. I believe, indeed, this is the first instance of a criminal trial in England, canvassed for like an election, supported by defamation, and publicly persisted in, in the face of a court of justice without

the smallest shadow of evidence. This deficiency has compelled the counsel for the Crown to supply the baldness of the cause with the most foreign invective—foreign, not only in proof, but in accusation. In justice to them I use the word *compelled*, as, I believe none of them would have been inclined, from what I know of their own manners and dispositions, to adopt such a conduct without a most imminent *Westminster Hall necessity*, viz., that of saying something in support of a cause which nothing but slander and falsehood could support. Their duty as *public* and *private* men was, perhaps, as incompatible as the duty of my clients; and they have chosen, like them, to fulfil the *public* one; and, indeed, nothing less than the great ability and eloquence (*I will not say the propriety*) with which that public duty was fulfilled at the trial, could have saved the prosecution from ridicule and contempt. As for us, I am sure we have lost nothing with the world, or with the Court, by our moderation: nor could the prejudices against us, even if the trial had not dispelled them, reach us within these venerable walls. Nothing, unsupported by evidence, that has been said here, or anywhere, will have any other effect upon the Court than to inspire it with more abundant caution in pronouncing judgment. Judges in this country are not expected to shut themselves up from society; and, therefore, when a subject that is to pass in judgment before them is of a public and popular nature, and base arts have been used to excite prejudices, it will only make wise and just magistrates (such as I know, and rejoice that I am addressing myself to) the more upon their guard rigidly to confine all their views to the record of the charge which lies before them, and to the evidence by which it has been proved, and to be doubly jealous of every avenue by which human prejudices can force their way to mislead the soundest understandings, and to harden the most upright hearts.

[The Court, by its judgment, only imposed a fine of one thousand pounds upon each of the defendants; a sentence which, we believe, was considered at the time by the whole profession of the law, and by all others qualified to consider such a subject, as highly just and proper, under all the circumstances of the case. The accusation was weighty, but the judges were bound, by their oaths, to weigh all the circumstances of mitigation, as they appeared from the facts in evidence, and from the pleadings of the counsel at the bar. They were not to pronounce a severe judgment because the House of Commons was the prosecutor. Mr. Burke, however, who had taken a very warm, and, we have no doubt, an honest part, in the prosecution, took great offence at the lenient conclusion; and repeatedly animadverted upon it in the House of Commons.]

*SPEECH for LORD GEORGE GORDON against Constructive Treason,
delivered in Westminster Hall, Feb. 1781.*

THE SUBJECT.

ON the close of the evidence, which was about midnight, Mr. Erskine rose and addressed the jury in the following speech. The Solicitor-General replied, and the jury, after being charged by the venerable Earl of Mansfield, then Chief-Justice, retired to deliberate. They returned into court about three in the morning, and brought in a verdict *Not Guilty*, which was repeated from mouth to mouth to the uttermost extremities of London by the multitudes which filled the streets.

The editor, though he forbears from observing upon the arguments he has collected, cannot forbear remarking, that the great feature of the following speech is, that it combated successfully the doctrine of constructive treasons, a doctrine highly dangerous to the public freedom.

It is recorded of Dr. Johnson that he expressed his satisfaction at the acquittal of this nobleman on that principle. "I am glad," said he, "that Lord George Gordon has escaped, rather than a precedent should be established of hanging a man for constructive treason." *

THE SPEECH.

GENTLEMEN OF THE JURY,—Mr Kenyon † having informed the Court that we propose to call no other witnesses, it is now my duty to address myself to you, as counsel for the noble prisoner at the bar, the whole evidence being closed. I use the word closed, because it is certainly not finished, since I have been obliged to leave the place in which I sat, to disentangle myself from the volumes of men's names which lay there under my feet, whose testimony, had it been necessary for the defence, would have confirmed all the facts that are already in evidence before you.‡

Gentlemen, I feel myself entitled to expect, both from you and from the Court, the greatest indulgence and attention; I am, indeed, a greater object of your compassion than even my noble friend whom I am defending. He rests secure in conscious innocence, and in the well-placed assurance that it can suffer no stain in your hands: not so with ME; I stand up before you a troubled, I am afraid a *guilty* man, in having presumed to accept of the

* Boswell's Life of Johnson.

† Afterwards Lord Kenyon, and Chief-Justice of the Court of King's Bench.

‡ Mr. Erskine sat originally in the front row, under which there were immense piles of papers, and he retired back before he began to address the jury.

awful task which I am now called upon to perform,—a task which my learned friend who spoke before me, though he has justly risen by extraordinary capacity and experience to the highest rank in his profession, has spoken of with that distrust and diffidence which becomes every Christian in a cause of blood. If Mr. Kenyon has such feelings, think what mine must be. Alas! gentlemen, who am I?—a young man of little experience, unused to the bar of criminal courts, and sinking under the dreadful consciousness of my defects. I have, however, this consolation, that no ignorance nor inattention on my part can possibly prevent you from seeing, under the direction of the Judges, that the Crown has established no case of treason.

Gentlemen, I did expect that the Attorney-General, in opening a great and solemn state prosecution, would have at least indulged the advocates for the prisoner with his notions on the law, as applied to the case before you, in less general terms. It is very common indeed, in little civil actions, to make such obscure introductions by way of trap; but in criminal cases, it is unusual and unbecoming; because the right of the Crown to reply, even where no witnesses are called by the prisoner, gives it thereby the advantage of replying, without having given scope for observations on the principles of the opening, with which the reply must be consistent.

One observation he has, however, made on the subject, in the truth of which I heartily concur—viz., that the crime of which the noble person at your bar stands accused is the very *highest* and most *atrocious* that a member of civil life can possibly commit; because it is not, like all *other* crimes, merely an *injury* to society from the breach of some of its reciprocal relations, but is an attempt to *utterly dissolve and destroy society altogether*.

In nothing, therefore, is the wisdom and justice of our laws so strongly and eminently manifested, as in the *rigid, accurate, cautious, explicit, unequivocal* definition of what shall constitute this high offence; for, high treason consisting in the breach and dissolution of that allegiance which binds society together, if it were left ambiguous, uncertain, or undefined, all the other laws established for the personal security of the subject would be utterly useless; since this offence, which, from its nature, is so capable of being created and judged of by rules of political expediency on the spur of the occasion, would be a rod at will to bruise the most virtuous members of the community, whenever virtue might become troublesome or obnoxious to a bad Government.

Injuries to the persons and properties of our neighbours, considered as individuals, which are the subjects of all other criminal prosecutions, are not only capable of greater precision, but the powers of the state can be but rarely interested in straining them beyond their legal interpretation; but if *treason, where the Government itself is directly offended*, were left to the judgment of its

ministers, without any boundaries,—nay, without the most *broad, distinct, and inviolable* boundaries marked out by law,—there could be no public freedom, and the condition of an Englishman would be no better than a slave's at the foot of a sultan; since there is little difference whether a man dies by the stroke of a sabre, without the forms of a trial, or by the most pompous ceremonies of justice, if the crime could be made at pleasure by the state to fit the fact that was to be tried.

Would to God, gentlemen of the jury, that this were an observation of theory alone, and that the page of our history was not blotted with so many melancholy, disgraceful proofs of its truth; but these proofs, melancholy and disgraceful as they are, have become glorious monuments of the wisdom of our fathers, and ought to be a theme of rejoicing and emulation to us. For from the mischief constantly arising to the state from every extension of the ancient law of treason, the ancient law of treason has been always restored, and the constitution at different periods washed clean, though, unhappily, with the blood of oppressed and innocent men.

When I speak of the ancient law of treason, I mean the venerable statute of King Edward III., on which the indictment you are now trying is framed,—a statute made, as its preamble sets forth, for the more precise definition of this crime, which had not, by the common law, been sufficiently explained; and consisting of different and distinct members, the plain *unextended letter* of which was thought to be a sufficient protection to the person and honour of the Sovereign, and an adequate security to the laws committed to his execution. I shall mention only two of the number, the others not being in the remotest degree applicable to the present accusation.

To compass or imagine the death of the King; such imagination, or purpose of the mind (visible only to its great Author), being manifested by some open act; an institution obviously directed, not only to the security of his natural person, but to the stability of the Government, the life of the prince being so interwoven with the constitution of the state that an attempt to destroy the one is justly held to be a rebellious conspiracy against the other.

Secondly, which is the crime charged in the indictment, *To levy war against him in his realm*;—a term that one would think could require no explanation, nor admit of any ambiguous construction amongst men who are willing to read laws according to the plain signification of the language in which they are written, but which has nevertheless been an abundant source of that *constructive* cavil which this sacred and valuable Act was made expressly to prevent. The real meaning of this branch of it—as it is bottomed in policy, reason, and justice, as it is ordained in plain, unambiguous words, as it is confirmed by the precedents of justice, and illustrated by the writings of the great lights of the law, in different ages of our history—I shall, before I sit down, impress upon your minds as a safe,

unnerring standard by which to measure the evidence you have heard. At present, I shall only say that, far and wide as judicial decisions have strained the construction of levying war beyond the warrant of the statute, to the discontent of some of the greatest ornaments of the profession, they hurt not me. As a citizen, I may disapprove of them; but as advocate for the noble person at your bar, I need not impeach their authority, because none of them have said more than this: that war may be levied against the King in his realm, not only by an insurrection to change or to destroy the fundamental constitution of the Government itself by rebellious war, but, by the same war, to endeavour to suppress the execution of the laws it has enacted, or to violate and overbear the protection they afford, not to individuals (which is a private wrong), but to any general class or description of the community, BY PREMEDITATED OPEN ACTS OF VIOLENCE, HOSTILITY, AND FORCE.

Gentlemen, I repeat these words, and call solemnly on the Judges to attend to what I say, and to contradict me if I mistake the law: BY PREMEDITATED OPEN ACTS OF VIOLENCE, HOSTILITY, AND FORCE;—nothing equivocal; nothing ambiguous; no intimidations, or over-awings, which signify nothing precise or certain, because what frightens one man, or set of men, may have no effect upon another; but that which COMPELS and COERCES; OPEN VIOLENCE AND FORCE.

Gentlemen, this is not only the whole text; but I submit it to the learned Judges, under whose correction I am happy to speak, an accurate explanation of the statute of treason, as far as it relates to the present subject, taken in its utmost extent of judicial construction, and which you cannot but see, not only in its letter, but in its most strained signification, is confined to acts which *immediately, openly, and unambiguously* strike at the very root and being of government, and not to any other offences, however injurious to its peace.

Such were the boundaries of high treason marked out in the reign of Edward III.; and as often as the vices of bad princes, assisted by weak submissive parliaments, extended state offences beyond the strict letter of that Act, so often the virtue of better princes and wiser parliaments brought them back again.

A long list of new treasons, accumulated in the wretched reign of Richard II., from which (to use the language of the Act that repealed them) “no man knew what to do or say for doubt of the pains of death,” were swept away in the first year of Henry IV., his successor; and many more, which had again sprung up in the following distracted arbitrary reigns, putting tumults and riots on a footing with armed rebellion were again levelled in the first year of Queen Mary, and the statute of Edward made once more the standard of treasons. The Acts, indeed, for securing his present Majesty’s illustrious house from the machinations of those very Papists *who are now so highly in favour*, have since that time

added to the list; but these not being applicable to the present case, the ancient statute is still our only guide, which is so plain and simple in its object, so explicit and correct in its terms, as to leave no room for intrinsic error; and the wisdom of its authors has shut the door against all extension of its plain letter; declaring in the very body of the Act itself, that nothing out of that plain letter should be brought within the pale of treason by inference or construction; but that, if any such cases happened, they should be referred to the Parliament.

This wise restriction has been the subject of much just eulogium by all the most celebrated writers on the criminal law of England. Lord Coke says, "The Parliament that made it was on that account called *Benedictum* or *Blessed*;" and the learned and virtuous Judge Hale, a bitter enemy and opposer of constructive treasons, speaks of this sacred institution with that enthusiasm which it cannot but inspire in the breast of every lover of the just privileges of mankind.

Gentlemen, in these mild days, when juries are so free and judges so independent, perhaps all these observations might have been spared as unnecessary; but they can do no harm; and this history of treason, so honourable to England, cannot (even imperfectly as I have given it) be unpleasant to Englishmen. At all events, it cannot be thought an inapplicable introduction to saying that Lord George Gordon, who stands before you indicted for that crime, is not, *cannot* be guilty of it, unless he has levied war against the King in his realm, contrary to the plain letter, spirit, and intention of the Act of 25th Edward III.; to be extended by no *new* or *occasional constructions*; to be *strained by no fancied analogies*; to be *measured by no rules of political expediency*; to be *judged of by no theory*; to be *determined by the wisdom of no individual, however wise—but to be expounded by the simple genuine LETTER of the law.*

Gentlemen, the only overt act charged in the indictment is—the assembling the multitude, which we all of us remember went up with the petition of the Associated Protestants on the second day of last June; and in addressing myself to a humane and sensible jury of Englishmen, sitting in judgment on the life of a fellow-citizen, more especially under the direction of a Court so filled as this is, I trust I need not remind you that the *purposes* of that multitude, as originally assembled on that day, and the *purposes and acts of him who assembled them*, are the sole objects of investigation; and that all the dismal consequences which followed, and which naturally link themselves with this subject in the firmest minds, must be altogether cut off and abstracted from your attention,—*further than the evidence warrants their admission.* Indeed, if the evidence had been coextensive with these consequences,—if it had been proved that the same multitude, *under the direction of Lord George Gordon*, had afterwards attacked the bank, broke open the

prisons, and set London in a conflagration,—I should not now be addressing you. Do me the justice to believe that I am neither so foolish as to imagine I could have defended him, nor so profligate as to wish it, if I could. But when it has appeared, not only by the evidence in the cause, but by the evidence of the thing itself,—**BY THE ISSUES OF LIFE, WHICH MAY BE CALLED THE EVIDENCE OF HEAVEN,** that these dreadful events were either entirely unconnected with the assembling of that multitude to attend the petition of the Protestants, or, at the very worst, the unforeseen, undesigned, unabettèd, and deeply regretted consequences of it, I confess the seriousness and solemnity of this trial sink and dwindle away. Only abstract from your minds all that misfortune, accident, and the wickedness of others have brought upon the scene,—and the cause requires no advocate. When I say that it requires no advocate, I mean that it requires no argument to screen it from the guilt of *treason*. For though I am perfectly convinced of the purity of my noble friend's intentions, yet I am not bound to defend his prudence, nor to set it up as a pattern for imitation; since you are not trying him for imprudence, for indiscreet zeal, or for want of foresight and precaution,—but for a deliberate and malicious predetermination to overpower the laws and government of his country, by **HOSTILE, REBELLIOUS FORCE.**

The indictment, therefore, first charges that the multitude, assembled on the 2d of June, "**WERE ARMED AND ARRAYED IN A WARLIKE MANNER:**" which indeed, if it had omitted to charge, we should not have troubled you with any defence at all, because no judgment could have been given on so defective an indictment; for the statute never meant to put an unarmed assembly of citizens on a footing with armed rebellion; and the crime, whatever it is, must always appear on the record to warrant the judgment of the Court.

It is certainly true, that it has been held to be matter of evidence, and dependent on circumstances, what numbers, or species of equipment and order, though not the regular equipment and order of soldiers, shall constitute an army so as to maintain the averment in the indictment of a warlike array; and likewise, what kinds of violence, though not pointed at the King's person, or the existence of the Government, shall be construed to be war against the King. But as it has never yet been maintained in argument in any court of the kingdom, or even speculated upon in theory, that a multitude, without either weapons offensive or defensive of any sort or kind, and yet not supplying the want of them by such acts of violence as multitudes sufficiently great can achieve without them, was a hostile array within the statute;—as it has never been asserted by the wildest adventurer in constructive treason, that a multitude,—armed with nothing,—threatening nothing,—and doing nothing, was an army levying war; I am entitled to say, that the evidence does not support the first charge in the indictment; but

that, on the contrary, it is manifestly false;—false in the knowledge of the Crown, which prosecutes it,—false in the knowledge of every man in London who was not bedridden on Friday the 2d of June, and who saw the peaceable demeanour of the Associated Protestants.

But you will hear, no doubt, from the Solicitor-General (*for they have saved all their intelligence for the reply*) that fury supplies arms—*furor arma ministrat*;—and the case of Damaree will, I suppose, be referred to, where the people assembled had no banners or arms, but only clubs and bludgeons: yet the ringleader, who led them on to mischief, was adjudged to be guilty of high treason for levying war. This judgment it is not my purpose to impeach, for I have no time for digression to points that do not press upon me. In the case of Damaree, the mob, though not regularly armed, were provided with such weapons as best suited their mischievous designs:—their designs were, besides, open and avowed, and all the mischief was done that could have been accomplished, if they had been in the completest armour. They burnt dissenting meeting-houses protected by law, and Damaree was taken at their head, *in flagrante delicto*, with a torch in his hand, not only in the very act of destroying one of them, but leading on his followers *in person*, to the avowed destruction of all the rest. There could therefore be no doubt of *his* purpose and intention, nor any great doubt that the perpetration of such purpose was, from *its generality*, high treason, if perpetrated by such a force as distinguishes a felonious riot from a treasonable levying of war. The principal doubt, therefore, in that case was, whether such an unarmed riotous force was war, within the meaning of the statute; and on that point very learned men have differed; nor shall I attempt to decide between them, because in this one point they all agree. *Gentlemen, I beseech you to attend to me here.* I say on this point they all agree; *that it is the INTENTION of assembling them, which forms the guilt of treason.* I will give it you in the words of high authority, the learned Foster; whose private opinions will, no doubt, be pressed upon you as doctrine and law, and which, if taken together, as all opinions ought to be, and not extracted in smuggled sentences to serve a shallow trick, I am contented to consider as authority.

That great judge, immediately after supporting the case of Damaree as a levying war within the statute, against the opinion of Hale in a similar case, viz., the destruction of bawdy-houses, which happened in his time, says, "*The true criterion, therefore, seems to be—quo animo did the parties assemble?—with what intention did they meet?*"

On that issue, then, by which I am supported by the whole body of the criminal law of England,—concerning which there are no practical precedents of the courts that clash, nor even abstract opinions of the closet that differ,—I come forth with boldness to

meet the Crown ; for even supposing that peaceable multitude,—though not hostilely arrayed,—though without one species of weapon among them,—though assembled without plot or disguise by a public advertisement, exhorting, nay, commanding peace, and inviting the magistrates to be present to restore it, if broken,—though composed of thousands who are now standing around you, unimpeached and unproved, yet who are all principals in treason, if such assembly was treason ; supposing, I say, this multitude to be nevertheless an army within the statute, still the great question would remain behind, on which the guilt or innocence of the accused must singly depend, and which it is your exclusive province to determine—namely, whether they were assembled by my noble client *for the traitorous purpose charged in the indictment* ? For war must not only be levied, but it must be levied against the King in his realm—*i.e.*, either directly against his person to alter the constitution of the Government of which he is the head, or to suppress the laws committed to his execution, BY REBELLIOUS FORCE. You must find that Lord George Gordon assembled these men *with that traitorous intention*. You must find not merely a riotous illegal *petitioning*,—not a tumultuous, indecent importunity to influence Parliament,—not the compulsion of motive, from seeing so great a body of people united in sentiment and clamorous supplication,—BUT THE ABSOLUTE, UNEQUIVOCAL COMPULSION OF FORCE FROM THE HOSTILE ACTS OF NUMBERS UNITED IN REBELLIOUS CONSPIRACY AND ARMS.

This is the issue you are to try ; for crimes of all denominations consist wholly in the purpose of the human will producing the act : *Actus non facit reum nisi mens sit rea*. The act does not constitute guilt, unless the *mind* be guilty. This is the great text from which the whole moral of penal justice is deduced : it stands at the top of the criminal page throughout all the volumes of our humane and sensible laws ; and Lord Chief-Justice Coke, whose chapter on this crime is the most authoritative and masterly of all his valuable works, ends almost every sentence with an emphatical repetition of it.

The indictment *must* charge an open act, because the purpose of the mind, which is the object of trial, can only be known by actions ; or, again to use the words of Foster, who has ably and accurately expressed it, “The traitorous purpose is the treason, the overt act, the means made use of to effectuate the intentions of the heart.” But why should I borrow the language of Foster, or of any other man, when the language of the indictment itself is lying before our eyes ? What does it say ? Does it directly charge the overt act as in itself constituting the crime ? No. It charges that the prisoner “maliciously and traitorously did *compass, imagine, and intend to raise and levy war and rebellion against the King* ;” this is the malice-prepense of treason ; and that to fulfil and bring to

effect *such traitorous compassings and intentions*, he did, on the day mentioned in the indictment, actually assemble them, and levy war and rebellion against the King. Thus the law, which is made to correct and punish the wickedness of the heart, and not the unconscious deeds of the body, goes up to the fountain of human agency, and arraigns the lurking mischief of the soul, dragging it to light by the evidence of open acts. The hostile *mind* is the crime; and, therefore, unless the matters which are in evidence before you do, beyond all doubt or possibility of error, convince you that the prisoner is a determined traitor *in his heart*, he is not guilty.

It is the same principle which creates all the various degrees of homicide, from that which is excusable to the malignant guilt of murder. The fact is the same in all; the death of the man is the imputed crime; but the *intention* makes all the difference; and he who killed him is pronounced a murderer, a single felon, or only an unfortunate man, as the circumstances by which his mind is deciphered to the jury show it to have been cankered by deliberate wickedness or stirred up by sudden passions.

Here an immense multitude was, beyond all doubt, assembled on the 2d of June; but whether ~~HE~~ that assembled them be guilty of high treason, of a high misdemeanour, or only of a breach of the Act of King Charles II. against tumultuous petitioning (if such an Act still exists), depends wholly upon the evidence of his purpose in assembling them, to be gathered by you, and *by you alone*, from the whole tenor of his conduct; and to be gathered, not by *inference* or *probability*, or reasonable *presumption*, but in the words of the Act, *provably*; that is, in the full unerring force of demonstration. You are called upon your oaths to say, *not* whether Lord George Gordon assembled the multitudes in the place charged in the indictment, for that is not denied; but whether it appears by the facts produced in evidence for the Crown, when confronted with the proofs which we have laid before you, that he assembled them *in hostile array, and with a hostile mind, to take the laws into his own hands by main force, and to dissolve the constitution of the Government unless his petition should be listened to by Parliament*.

That it is *your* exclusive province to determine. The Court can only tell you what acts the law, in its general theory, holds to be high treason, on the general assumption that such acts proceed from traitorous purposes: but they must leave it to *your* decision, and to *yours* alone, whether the acts proved appear, in the present instance, under all the circumstances, to have arisen from the causes which form the essence of this high crime.

Gentlemen, you have now heard the law of treason: first, in the abstract, and secondly, as it applies to the general features of the case: and you have heard it with as much sincerity as if I had addressed you upon my oath from the bench where the Judges sit.

I declare to you solemnly, in the presence of that great Being at whose bar we must all hereafter appear, that I have used no one art of an advocate, but have acted the plain unaffected part of a Christian man instructing the consciences of his fellow-citizens to do justice. If I have deceived you on the subject, I am myself deceived; and if I am misled through ignorance, my ignorance is incurable, for I have spared no pains to understand it.

I am not stiff in opinions; but before I change any one of those that I have given you to-day, I must see some direct monument of justice that contradicts them: for the law of England pays no respect to theories, however ingenious, or to authors, however wise; and therefore, unless you hear me refuted by a series of *direct precedents*, and not by vague doctrine, if you wish to sleep in peace, *follow me*.

And now the most important part of our task begins—namely, the application of the evidence to the doctrines I have laid down; for trial is nothing more than the reference of facts to a certain rule of action, and a long recapitulation of them only serves to distract and perplex the memory, without enlightening the judgment, unless the great standard principle by which they are to be measured is fixed and rooted in the mind. When that is done (which I am confident has been done by you), everything worthy of observation falls naturally into its place, and the result is safe and certain.

Gentlemen, it is already in proof before you (indeed, it is now a matter of history), that an Act of Parliament passed in the session of 1778, for the repeal of certain restrictions which the policy of our ancestors had imposed upon the Roman Catholic religion, to prevent its extension, and to render its limited toleration harmless; restrictions imposed, *not* because our ancestors took upon them to pronounce that faith to be offensive to God, but because it was incompatible with good faith to man; being utterly inconsistent with allegiance to a Protestant Government, from their oaths and obligations, to which it gave them not only a release, but a crown of glory as the reward of treachery and treason.

It was indeed with astonishment that I heard the Attorney-General stigmatise those wise regulations of our patriot ancestors with the title of factious and cruel impositions on the consciences and liberties of their fellow-citizens. Gentlemen, they were *at the time* wise and salutary regulations; regulations to which this country owes its freedom, and His Majesty his crown,—a crown which he wears under the strict entail of professing and protecting that religion which they were made to repress; and which I know my noble friend at the bar joins with me, and with all good men, in wishing that he and his posterity may wear for ever.

It is not my purpose to recall to your minds the fatal effects which bigotry has in former days produced in this island. I will

not follow the example the Crown has set me, by making an attack on your passions on subjects foreign to the object before you; I will not call your attention from those flames, kindled by a villainous banditti (which they have thought fit, in defiance of evidence, to introduce), by bringing before your eyes the more cruel flames in which the bodies of our expiring, meek, patient, Christian fathers were, little more than a century ago, consuming in Smithfield. I will not call up from the graves of martyrs all the precious holy blood that has been spilt in this land to save its established Government and its reformed religion from the secret villany and the open force of Papists. The cause does not stand in need even of such honest arts; and I feel my heart too big voluntarily to recite such scenes when I reflect that some of my own, and my best and dearest progenitors, from whom I glory to be descended, ended their innocent lives in prison and in exile, *only because they were Protestants*.

Gentlemen, whether the great lights of science and of commerce, which, since those disgraceful times, have illuminated Europe, may, by dispelling these shocking prejudices, have rendered the Papists of this day as safe and trusty subjects as those who conform to the national religion established by law, I shall not take upon me to determine. It is wholly unconnected with the present inquiry. We are not trying a question either of divinity or civil policy; and I shall therefore not enter at all into the motives or merits of the Act that produced the Protestant petition to Parliament. It was certainly introduced by persons who cannot be named by any good citizen without affection and respect. But this I will say, without fear of contradiction, that it was sudden and unexpected; that it passed with uncommon precipitation, considering the magnitude of the object; that it underwent no discussion; and that the heads of the Church, the constitutional guardians of the national religion, were never consulted upon it. Under such circumstances, it is no wonder that many sincere Protestants were alarmed; and they had a right to spread their apprehensions. It is the privilege and *the duty* of all the subjects of England to watch over their religious and civil liberties, and to approach either their representatives or the throne with their fears and their complaints—a privilege which has been bought with the dearest blood of our ancestors, and which is confirmed to us by law as our ancient birthright and inheritance.

Soon after the repeal of the Act, the Protestant Association began, and from small beginnings extended over England and Scotland. A deed of association was signed, *by all legal means* to oppose the growth of Popery: and which of the advocates for the Crown will stand up and say that such an union was illegal? Their union was perfectly constitutional; there was no obligation of secrecy; their transactions were all public; a committee was

appointed for regularity and correspondence; and circular letters were sent to all the dignitaries of the Church, inviting them to join with them in the protection of the national religion.

All this happened before Lord George Gordon was a member of, or the most distantly connected with it; for it was not till November 1779 that the London Association made him an offer of their chair, by a unanimous resolution communicated to him, unsought and unexpected, in a public letter signed by the secretary in the name of the whole body; and from that day to the day he was committed to the Tower, I will lead him by the hand in your view, that you may see there is no blame in him. Though all his behaviour was unreserved and public, and though watched by wicked men for purposes of vengeance, the Crown has totally failed in giving it such a context as can justify, in the mind of any reasonable man, the conclusion it seeks to establish.

This will fully appear hereafter; but let us first attend to the evidence on the part of the Crown.

The first witness to support this prosecution is—

William Hay—a bankrupt in *fortune* he acknowledges himself to be, and I am afraid he is a bankrupt in *conscience*. Such a scene of impudent, ridiculous inconsistency would have utterly destroyed his credibility in the most trifling civil suit; and I am, therefore, almost ashamed to remind you of his evidence when I reflect that you will never suffer it to glance across your minds on this solemn occasion.

This man, whom I may now, without offence or slander, point out to you as a dark Popish spy, who attended the meetings of the London Association to pervert their harmless purposes, conscious that the discovery of his character would invalidate all his testimony, endeavoured at first to conceal the activity of his zeal, by denying that he had seen any of the destructive scenes imputed to the Protestants; yet almost in the same breath it came out, by his own confession, that there was hardly a place, public or private, where riot had erected her standard, in which he had not been, nor a house, prison, or chapel that was destroyed, to the demolition of which he had not been a witness. He was at Newgate, the Fleet, at Langdale's, and at Colman Street; at the Sardinian Ambassador's, and in Great Queen Street, Lincoln's Inn Fields. What took him to Coachmakers' Hall? He went there, as he told us, to watch their proceedings, because he expected no good from them; and to justify his prophecy of evil, he said, on his examination by the Crown, that as early as December he had heard some alarming republican language. What language did he remember? "Why, that the Lord Advocate of Scotland was called only HARRY DUNDAS." Finding this too ridiculous for so grave an occasion, he endeavoured to put some words about the breach of the King's coronation oath into the prisoner's mouth,

as proceeding from himself, which it is notorious he read out of an old Scotch book, published near a century ago, on the abdication of King James II.

Attend to his cross-examination:—He was *sure* he had seen Lord George Gordon at Greenwood's room in January; but when Mr. Kenyon, who knew Lord George had *never* been there, advised him to recollect himself, he desired to consult his notes. First, he is positively sure from his memory that he had seen him there: then he says he cannot trust his memory without referring to his papers; on looking at them, they contradict him; and he then confesses that he *never* saw Lord George Gordon at Greenwood's room in January, when his note was taken, *nor at any other time*. But *why* did he take notes? He said it was because he foresaw what would happen. How fortunate the Crown is, gentlemen, to have such friends to collect evidence by anticipation! *When* did he begin to take notes? He said on the 21st of February, which was the *first* time he had been alarmed at what he had seen and heard, although not a minute before he had been reading a note taken at Greenwood's room in *January*, and had sworn that he attended their meetings from apprehensions of consequences as early as *December*.

Mr. Kenyon, who now saw him bewildered in a maze of falsehood, and suspecting his notes to have been a villainous fabrication to give the show of correctness to his evidence, attacked him with a shrewdness for which he was wholly unprepared. You remember the witness had said that he always took notes when he attended any meetings where he expected their deliberations might be attended with dangerous consequences. "*Give me one instance,*" says Mr. Kenyon, "*in the whole course of your life, where you ever took notes before.*" Poor Mr. Hay was *thunderstruck*; the sweat ran down his face, and his countenance bespoke despair, not recollection:—"Sir, I must have an instance; tell me when and where?" Gentlemen, it was now too late; *some* instance he was obliged to give, and, as it was evident to everybody that he had one still to choose, I think he might have chosen a better. *He had taken notes at the General Assembly of the Church of Scotland six-and-twenty years before*. What! Did he apprehend dangerous consequences from the deliberations of the grave elders of the Kirk? Were *THEY* levying war against the King? At last, when he is called upon to say to whom he communicated the intelligence he had collected, the spy stood confessed indeed. At first he refused to tell, saying he was his friend, and that he was not obliged to give him up; and when forced at last to speak, it came out to be *Mr. Butler*, a gentleman universally known, and who, from what I know of him, I may be sure never employed him or any other spy, because he is a man every way respectable, but who certainly is not only a Papist, but the person who was employed,

in all their proceedings, to obtain the late indulgences from Parliament. He said Mr. Butler was his particular friend, yet professed himself ignorant of his religion. I am sure he could not be desired to conceal it; Mr. Butler makes no secret of his religion; it is no reproach to any man who lives the life he does; but Mr. Hay thought it of moment to *his own* credit in the cause, that *he himself* might be thought a Protestant, unconnected with Papists, and not a Popish spy.

So ambitious, indeed, was the miscreant of being useful in this odious character, through every stage of the cause, that after staying a little in St. George's Fields, he ran home to his own house in St. Dunstan's Churchyard, and got upon the leads, where he swore he saw *the very same man* carrying *the very same flag* he had seen in the Fields. Gentlemen, whether the petitioners employed the same standard-man through the whole course of their peaceable procession is certainly totally immaterial to the cause, but the circumstance is material to show the wickedness of the man. "How," says Mr. Kenyon, "do you know that it was the same person you saw in the Fields? Were you acquainted with him?" "No." "How then?" "Why, he looked like a brewer's servant." "*Like a brewer's servant!* What! Were they not all in their Sunday clothes?" "Oh yes, they were all in their Sunday clothes." "Was the man with the flag, then, alone in the dress of his trade?" "No." "Then, how do you know he was a brewer's servant?" *Poor Mr. Hay!—nothing but sweat and confusion again.* At last, after a hesitation which everybody thought would have ended in his running out of court, he said he knew him to be a brewer's servant *because there was something particular in the cut of his coat, the cut of his breeches, AND THE CUT OF HIS STOCKINGS.*

You see, gentlemen, by what strange means villany is sometimes detected; perhaps he might have escaped from me, but he sunk under that shrewdness and sagacity which ability, without long habits, does not provide. Gentlemen, you will not, I am sure, forget, whenever you see a man about whose apparel there is anything particular, to set him down for a brewer's servant.

Mr. Hay afterwards went to the lobby of the House of Commons. What took him there? He thought himself in danger; and therefore, says Mr. Kenyon, you thrust yourself voluntarily into the very centre of danger. *That would not do.* Then he had a *particular friend*, whom he knew to be in the lobby, and whom he apprehended to be in danger. "Sir, who was that particular friend. Out with it. Give us his name instantly." *All in confusion again. Not a word to say for himself; and the name of this person, who had the honour of Mr. Hay's friendship, will probably remain a secret for ever.*

It may be asked, Are these circumstances material? and the answer is obvious. They are material, because, when you see a

witness running into every hole and corner of falsehood, and as fast as he is made to bolt out of one, taking cover in another, you will never give credit to what that man relates as to any possible matter which is to affect the life or reputation of a fellow-citizen accused before you. God forbid that you should. I might therefore get rid of this wretch altogether, without making a single remark on that part of his testimony which bears upon the issue you are trying; but the Crown shall have the full benefit of it all. I will defraud it of nothing he has said. Notwithstanding all his folly and wickedness, let us for the present take it to be true, and see what it amounts to. What is it he states to have passed at Coach-makers' Hall? That Lord George Gordon desired the multitude to behave with unanimity and firmness, as the Scotch had done. Gentlemen, there is no manner of doubt that the Scotch behaved with unanimity and firmness in resisting the relaxation of the penal laws against Papists, and that by that unanimity and firmness they succeeded; but it was by the *constitutional* unanimity and firmness of the great body of the people of Scotland, whose example Lord George Gordon recommended, and not by the *riots and burning*, which they attempted to prove had been committed in Edinburgh in 1778.

I will tell you myself, gentlemen, as one of the people of Scotland, that there then existed, and still exist, eighty-five societies of Protestants, who have been, and still are, uniformly firm in opposing every change in that system of laws established to secure the Revolution; and Parliament gave way in Scotland to their united voice, and not to the firebrands of the rabble. It is the duty of Parliament to listen to the voice of the people; for they are the servants of the people; and when the constitution of Church or State is believed, whether truly or falsely, to be in danger, I hope there never will be wanting men (notwithstanding the proceedings of to-day) to desire the people to persevere and be firm. Gentlemen, has the Crown proved that the Protestant brethren of the London Association fired the mass-houses in Scotland, or acted in rebellious opposition to law, so as to entitle it to wrest the prisoner's expressions into an excitation of rebellion against the State, or of violence against the properties of English Papists, by setting up their firmness as an example? Certainly not. They have not even proved the naked fact of such violences, though such proof would have called for no resistance, since to make it bear as rebellious advice to the Protestant Association of London, it must have been first shown that such acts had been perpetrated or encouraged by the Protestant societies in the North.

Who has dared to say this? No man. The rabble in Scotland certainly did that which has since been done by the rabble in England, to the disgrace and reproach of both countries; but in neither country was there found one man of character or condition,

of any description, who abetted such enormities, nor any man, high or low, of any of the associated Protestants here or there, who were either convicted, tried, or taken on suspicion.

As to what this man heard, on the 29th of May, it was nothing more than the proposition of going up in a body to St. George's Fields, to consider how the petition should be presented, with the same exhortations to firmness as before. The resolution made on the motion has been read, and when I come to state the evidence on the part of my noble friend, I will show you the impossibility of supporting any criminal inference from what Mr. Hay afterwards puts in his mouth in the lobby, even taking it to be true. I wish here to be accurate [*looks on a card on which he had taken down his words*]. He says: "Lord George desired them to continue steadfastly to adhere to so good a cause as theirs was; promised to persevere in it himself, and hoped, though there was little expectation at present from the House of Commons, that they would meet with redress from their *mild and gracious Sovereign*, who, no doubt, would recommend it to his Ministers to repeal it." This was all he heard; and I will show you how this wicked man himself (if any belief is to be given to him) entirely overturns and brings to the ground the evidence of Mr. Bowen, on which the Crown rests singly for the proof of words which are more difficult to explain. Gentlemen, was this the language of rebellion? If a multitude were at the gates of the House of Commons, to command and insist on a repeal of this law, why encourage their hopes by reminding them that they had a mild and gracious Sovereign? If war was levying against him, there was no occasion for his mildness and graciousness. If he had said, "*Be firm and persevere, we shall meet with redress from the PRUDENCE of the Sovereign*," it might have borne a different construction; because, whether he was gracious or severe, his prudence might lead him to submit to the necessity of the times. The words sworn to were, therefore, perfectly clear and unambiguous—*Persevere in your zeal and supplications, and you will meet with redress from a mild and gracious King, who will recommend it to his Minister to repeal it*. Good God! if they were to wait till the King, whether from benevolence or fear, should direct his Minister to influence the proceedings of Parliament, how does it square with the charge of instant coercion or intimidation of the House of Commons? If the multitude were assembled with the premeditated design of producing immediate repeal by terror or arms, is it possible to suppose that their leader would desire them to be quiet, and refer them to those qualities of the prince which, however eminently they might belong to him, never could be exerted on subjects in rebellion to his authority? In what a labyrinth of nonsense and contradiction do men involve themselves, when, forsaking the rules of evidence, they would draw conclusions from words in contradiction to language, and in defiance of common sense.

The next witness that is called to you by the Crown is Mr. Metcalf. He was not in the lobby, but speaks only to the meeting in Coachmakers' Hall on the 29th of May, and in St. George's Fields. He says that at the former, Lord George reminded them that the Scotch had succeeded by their unanimity, and hoped that no one who had signed the petition would be ashamed or afraid to show himself in the cause;—that he was ready to go to the gallows for it;—that he would not present the petition of a lukewarm people;—that he desired them to come to St. George's Fields, distinguished with blue cockades, and that they should be marshalled in four divisions. Then he speaks to having seen them in the fields in the order which has been prescribed; and Lord George Gordon in a coach, surrounded with a vast concourse of people with blue ribbons forming like soldiers, but was not near enough to hear whether the prisoner spoke to them or not. Such is Mr. Metcalf's evidence; and after the attention you have honoured me with, and which I shall have occasion so often to ask again on the same subject, I shall trouble you with but one observation, viz., That it cannot without absurdity be supposed, that if the assembly at Coachmakers' Hall had been such conspirators as they are represented, their doors would have been open to strangers like this witness, to come in to report their proceedings.

The next witness is Mr. ANSTRUTHER, who speaks to the language and deportment of the noble prisoner, both at Coachmakers' Hall on the 29th of May, and afterwards on the 2d of June, in the lobby of the House of Commons. It will be granted to me, I am sure, even by the advocates of the Crown, that this gentleman, not only from the clearness and consistency of his testimony, but from his rank and character in the world, is infinitely more worthy of credit than Mr. Hay, who went before him; and if the circumstances of irritation and confusion under which the Rev. Mr. Bowen confessed himself to have heard and seen what he told you he heard and saw, I may likewise assert, without any offence to the reverend gentleman, and without drawing any parallel between their credits, that where their accounts of this transaction differ, the preference is due to the former. Mr. Anstruther very properly prefaced his evidence with this declaration: "I do not mean to speak accurately to words; it is impossible to recollect them at this distance of time." I believe I have used his very expression, and such expression it well became him to use in a *case of blood*. But WORDS, even if they could be accurately remembered, are to be admitted with *great reserve and caution* when the purpose of the speaker is to be measured by them. They are transient and fleeting; frequently the effect of a sudden transport,—easily misunderstood,—and often unconsciously misrepresented. It may be the fate of the most innocent language to appear ambiguous or even malignant, when related in mutilated detached passages, by people to whom it is not addressed, and who

know nothing of the previous design either of the speaker or of those to whom he spoke. Mr. Anstruther says that he heard Lord George Gordon desire the petitioners to meet him on the Friday following in St. George's Fields, and that if there were fewer than twenty thousand people he would not present the petition, as it would not be of consequence enough ;—and that he recommended to them the example of the Scotch, who, by their firmness, had carried their point.

Gentlemen, I have already admitted that they did by firmness carry it. But has Mr. Anstruther attempted to state any one expression that fell from the prisoner to justify the positive unerring conclusion, or even the presumption, that the *firmness* of the Scotch Protestants, by which the point was carried in Scotland, *was the resistance and riots of the rabble*? No, gentlemen; he singly states the words as he heard them in the hall on the 29th, and all that he afterwards speaks to in the lobby repels so harsh and dangerous a construction. The words sworn to at Coach-makers' Hall are, "that he recommended temperance and firmness." Gentlemen, if his motives are to be judged by words, for Heaven's sake let these words carry their popular meaning in language. Is it to be presumed without proof, that a man means *one* thing because he says *another*? Does the exhortation of temperance and firmness apply most naturally to the constitutional resistance of the Protestants of Scotland, or to the outrages of ruffians who pulled down the houses of their neighbours? Is it possible, with decency, to say in a court of justice that the recommendation of temperance is the excitation to villany and frenzy? But the words, it seems, are to be construed, not from their own signification, but from that which follows them, viz., *by that the Scotch carried their point*. Gentlemen, *is* it in evidence before you that *by rebellion* the Scotch carried their point, or that the indulgences to Papists were not extended to Scotland because the *rabble* had opposed their extension? Has the Crown authorised either the Court or its law servants to tell you so? Or can it be decently maintained that Parliament was so weak or infamous as to yield to a wretched mob of vagabonds at Edinburgh what it has since refused to the earnest prayers of a hundred thousand Protestants in London? No, gentlemen of the jury; Parliament was not, I hope, so abandoned. But the Ministers knew that the Protestants in Scotland were to a man abhorrent of that law; and though they never held out resistance, if Government should be disposed to cram it down their throats by force, yet such a violence to the united sentiments of a whole people appeared to be a measure so obnoxious, so dangerous, and withal so unreasonable, that it was wisely and judiciously dropped to satisfy the general wishes of the nation, and not to avert the vengeance of those low incendiaries whose misdeeds have rather been talked of than proved.

Thus, gentlemen, the exculpation of Lord George's conduct on the 29th of May is sufficiently established by the very evidence on which the Crown asks you to convict him:—since in recommending *temperance and firmness, after the example of Scotland*, you cannot be justified in pronouncing that he meant more than the firmness of the grave and respectable people in that country, to whose constitutional firmness the Legislature had before acceded, instead of branding it with the title of rebellion; and who, in my mind, deserves thanks from the King for temperately and firmly resisting every innovation which they conceived to be dangerous to the national religion, independently of which His Majesty (without a new limitation by Parliament) has no more title to the Crown than I have.

Such, gentlemen, is the whole amount of all my noble friend's previous communication with the petitioners, whom he afterwards assembled to consider how their petition should be presented. This is all, not only that men of credit can tell you on the part of the prosecution, but all that even the worst vagabond who ever appeared in a court,—the very scum of the earth,—thought himself safe in saying, upon oath on the present occasion. Indeed, gentlemen, when I consider my noble friend's situation, his open, unreserved temper, and his warm and animated zeal for a cause which rendered him obnoxious to so many wicked men;—speaking daily and publicly to mixed multitudes of friends and foes on a subject which affected his passions, I confess I am astonished that no other expressions than those in evidence before you have found their way into this court. That they have not found their way is surely a most satisfactory proof that there was nothing in his heart which even youthful zeal could magnify into guilt, or that want of caution could betray.

Gentlemen, Mr. Anstruther's evidence, when he speaks of the lobby of the House of Commons, is very much to be attended to. He says, "I saw Lord George leaning over the gallery," which position, joined with what he mentioned of his talking with the chaplain, marks the time, and casts a strong doubt on Bowen's testimony, which you will find stands, in this only material part of it, single and unsupported. "I then heard him," continues Mr. Anstruther, "tell them that they had been called a mob in the House, and that peace-officers had been sent to disperse them, *peaceable* petitioners; but that by steadiness and firmness they might carry their point, as he had no doubt His Majesty, who was a *gracious* prince, would send to his Ministers to repeal the Act when he heard his subjects were coming up for miles round, and *wishing* its repeal." How coming up? In rebellion and arms to compel it? No! All is still put on the *graciousness* of the Sovereign in listening to the unanimous wishes of his people. If the multitude then assembled had been brought together to

intimidate the House by their firmness, or to coerce it by their numbers, it was ridiculous to look forward to the King's influence over it, when the collection of future multitudes should induce him to employ it. The expressions were therefore quite unambiguous, nor could malice itself have suggested another construction of them, were it not for the fact that the House was at that time surrounded, not by the petitioners whom the noble prisoner had assembled, but by a mob who had mixed with them, and who, therefore, when addressed by him, were instantly set down as his followers. He thought he was addressing the sober members of the Association, who, by "steadiness and perseverance," could understand nothing more than perseverance in that conduct he had antecedently prescribed, as steadiness signifies a uniformity, not a change of conduct; and I defy the Crown to find out a single expression, from the day he took the chair of the Association to the day I am speaking of, that justifies any other construction of "steadiness and firmness" than that which I put upon it before.

What would be the feelings of our venerable ancestors, who framed the statute of treasons to prevent their children being drawn into the snares of death, unless *provably* convicted by overt acts, if they could hear us disputing whether it was treason to desire harmless unarmed men to be firm and of good heart, and to trust to the graciousness of their King?

Here Mr. Anstruther closes his evidence, which leads me to Mr. Bowen, who is the only man—I beseech you, gentlemen of the jury, to attend to this circumstance—Mr. Bowen is the *only* man who has attempted, directly or indirectly, to say that Lord George Gordon uttered a syllable to the multitude in the lobby concerning the destruction of the mass-houses in Scotland. Not one of the Crown's witnesses—not even the wretched, abandoned Hay, who was kept, as he said, in the lobby the whole afternoon, from anxiety for his pretended friend—has ever glanced at any expression resembling it. They all finish with the expectation which he held out from a mild and *gracious* Sovereign. Mr. Bowen *ALONE* goes on further, and speaks of the successful riots of the Scotch; but speaks of them in such a manner as, so far from conveying the hostile idea, *which he seemed sufficiently desirous to convey*, tends directly to wipe off the dark hints and insinuations which have been made to supply the place of proof upon that subject—a subject which should not have been touched on without the fullest support of evidence, and where nothing but the most unequivocal evidence ought to have been received. He says his Lordship began by bidding them be QUIET, PEACEABLE, and STEADY—not *steady alone*; though, if that had been the expression, *singly, by itself*, I should not be afraid to meet it; but be quiet, *peaceable*, and steady. Gentlemen, I am indifferent what other expressions of dubious interpretation are mixed with these, for you are trying whether my noble friend

came to the House of Commons with a decidedly hostile mind ; and as I shall, on the recapitulation of our own evidence, trace him in your view without spot or stain down to the very moment when the imputed words were spoken, you will hardly forsake the whole innocent context of his behaviour, and torture your inventions to collect the blackest system of guilt, starting up in a moment, without being previously concerted, or afterwards carried into execution.

First, what are the words by which you are to be convinced that the Legislature was to be frightened into compliance, and to be coerced if terror should fail? "Be quiet, *peaceable*, and steady ; you are a good people, yours is a good cause. His Majesty is a *gracious* monarch, and when he hears that all his people, ten miles round, are collecting, he will send to his Ministers to repeal the Act." By what rules of construction can such an address to unarmed, defenceless men be tortured into treasonable guilt? It is impossible to do it without pronouncing, even in the total absence of all proof of fraud or deceit in the speaker, THAT QUIET SIGNIFIES TUMULT AND UPROAR, AND THAT PEACE SIGNIFIES WAR AND REBELLION.

I have before observed, that it was most important for you to remember, that with this exhortation to quiet and confidence in the King, the evidence of all the other witnesses closed ; even Mr. Anstruther, who was a long time afterwards in the lobby, heard nothing further ; so that if Mr. Bowen had been out of the case altogether, what would the amount have been? Why, simply, that Lord George Gordon, having assembled an unarmed, inoffensive multitude in St. George's Fields, to present a petition to Parliament, and finding them becoming tumultuous, to the discontent of Parliament and the discredit of the cause, desired them not to give it up, but to continue to show their zeal for the legal object in which they were engaged ; to manifest that zeal *quietly and peaceably*, and not to despair of success ; since, though the House was not disposed to listen to it, they had a GRACIOUS Sovereign, who would second the wishes of his people. This is the sum and substance of the whole. They were not, even by any one ambiguous expression, encouraged to trust to their numbers as sufficient to overawe the House, or to their strength to compel it, nor to the prudence of the state in yielding to necessity, but to *the indulgence of the King*, in compliance with the wishes of his people. Mr. Bowen, however, thinks proper to proceed ; and I beg that you will particularly attend to the sequel of his evidence. He stands *single* in all the rest that he says, which might entitle me to ask you absolutely to reject it ; but I have no objection to your believing every word of it, *if you can* ; because, if inconsistencies prove anything, they prove that there was nothing of that deliberation in the prisoner's expressions which can justify the inference of guilt. *I mean to be correct as to his words.* [Looks at his words,

which he had taken down on a card.] He says, "That Lord George told the people that an attempt had been made to introduce the bill into Scotland, and that they had no redress till the mass-houses were pulled down. That Lord Weymouth then sent official assurances that it should not be extended to them." Gentlemen, why is Mr. Bowen called by the Crown to tell you this? The reason is plain,—because the Crown, conscious that it could make no case of treason from the rest of the evidence in the sober judgment of law, aware that it had proved no purpose or act of force against the House of Commons to give countenance to the accusation, much less to warrant a conviction, found it necessary to hold up the noble prisoner as the wicked and cruel author of all those calamities, in which every man's passions might be supposed to come in to assist his judgment to decide. They therefore made him speak in enigmas to the multitude; not telling them *to do mischief* in order to succeed, but that *by mischief* in Scotland success had been obtained.

But were the mischiefs themselves that did happen here of a sort to support such conclusion? Can any man living, for instance, believe that Lord George Gordon could possibly have excited the mob to destroy the house of that great and venerable magistrate who has presided so long in this high tribunal, that the oldest of us do not remember him with any other impression than the awful form and figure of justice,—a magistrate who had always been the friend of the Protestant dissenters against the ill-timed jealousies of the Establishment—his countryman too—and, without adverting to the partiality not unjustly imputed to men of that country, a man of whom any country might be proud? No, gentlemen, it is not credible that a man of noble birth and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the prisoner) could possibly consent to the burning of the house of Lord Mansfield.*

If Mr. Bowen, therefore, had ended here, I can hardly conceive such a construction could be decently hazarded, consistent with the testimony of the witnesses we have called; how much less when, after the dark insinuations which such expressions might otherwise have been argued to convey, the very same person, on whose veracity or memory they are only to be believed, and who must be credited or discredited *in toto*, takes out the sting himself, by giving them such an immediate context and conclusion as renders the proposition ridiculous which his evidence is brought forward to establish; for he says, that Lord George Gordon instantly afterwards addressed himself thus:—*Beware of evil-minded persons, who may mix among you and do mischief, the blame of which will be imputed to you.*

* The house of this venerable nobleman in Bloomsbury Square was one of the first that was attacked by the mob.

Gentlemen, if you reflect on the slander which I told you fell upon the Protestants in Scotland by the acts of the rabble there, I am sure you will see the words are capable of an easy explanation. But as Mr. Bowen concluded with telling you that he heard them in the midst of noise and confusion, and as I can only take them from *him*, I shall not make an attempt to collect them into one consistent discourse, so as to give them a decided meaning in favour of my client, because I have repeatedly told you, that words, imperfectly heard and partially related, cannot be so reconciled. But this I will say—that he must be a *ruffian* and not a lawyer, who would dare to tell an English jury, that such ambiguous words, hemmed closely in between others not only innocent, but meritorious, are to be adopted to constitute guilt, by rejecting both introduction and sequel, with which they are absolutely irreconcilable and inconsistent: for if ambiguous words, when coupled with actions, decipher the mind of the actor, so as to establish the presumption of guilt, will not such as are plainly innocent and unambiguous go as far to repel such presumption? Is innocence more difficult of proof than the most malignant wickedness? Gentlemen, I see your minds revolt at such shocking propositions. I beseech you to forgive me; I am afraid that my zeal has led me to offer observations which I ought in justice to have believed every honest mind would suggest to itself with pain and abhorrence, without being illustrated and enforced.

I now come more minutely to the evidence on the part of the prisoner.

I before told you that it was not till November 1779, when the Protestant Association was already fully established, that Lord George Gordon was elected president by the unanimous voice of the whole body, unlooked-for and unsolicited; and it is surely not an immaterial circumstance, that at the very first meeting where his Lordship presided, a dutiful and respectful petition, the same which was afterwards presented to Parliament, was read and approved of—a petition which, so far from containing anything threatening or offensive, conveyed *not a very oblique reflection* upon the behaviour of the people in Scotland: taking notice that, as England and that country were now ONE, and as official assurances had been given that the law should not pass THERE, they hoped the *peaceable and constitutional deportment of the English* Protestants would entitle them to the approbation of Parliament.

It appears by the evidence of Mr. Erasmus Middleton, a very respectable clergyman, and one of the committee of the Association, that a meeting had been held on the 4th of May, at which Lord George was not present,—that at that meeting a motion had been made for going up with the petition in a body, but which not being regularly put from the chair, no resolution was come to upon it,—and that it was likewise agreed on, but in the same irregular man-

ner, that there should be no other public meeting previous to the presenting the petition,—that this last resolution occasioned great discontent, and that Lord George was applied to by a large and respectable number of the Association to call another meeting, to consider of the most prudent and respectful method of presenting their petition: but it appears that, before he complied with their request, he consulted with the committee on the propriety of compliance, who all agreeing to it, except the secretary, his Lordship advertised the meeting, which was afterwards held on the 29th of May. The meeting was therefore the act of the *whole* Association; and as to the original difference between my noble friend and the committee on the expediency of the measure, it is totally immaterial, since Mr. Middleton, who was one of the number who differed from him on that subject (and whose evidence is therefore infinitely more to be relied on), told you that his whole deportment was so clear and unequivocal, as to entitle him to assure you, on his most solemn oath, that he in his conscience believed his views were perfectly constitutional and pure. This most respectable clergyman further swears, that he attended all the previous meetings of the society, from the day the prisoner became president to the day in question, and that knowing they were objects of much jealousy and malice, he watched his behaviour with anxiety, lest his zeal should furnish matter for misrepresentation; but that he never heard an expression escape him which marked a disposition to violate the duty and subordination of a subject, or which could lead any man to believe that his objects were different from the avowed and legal objects of the Association. We could have examined thousands to the same fact, for, as I told you when I began to speak, I was obliged to leave my place to disencumber myself from their names.

This evidence of Mr. Middleton's, as to the 29th of May, must, I should think, convince every man how dangerous and unjust it is in witnesses, however perfect their memories, or however great their veracity, to come into a criminal court where a man is standing for his life or death, retailing scraps of sentences, which they had heard by thrusting themselves, from curiosity, into places where their business did not lead them; ignorant of the views and tempers of both speakers and hearers, attending only to a part, and, perhaps innocently misrepresenting that part, from not having heard the whole.

The witnesses for the Crown all tell you that Lord George said he would not go up with the petition unless he was attended by twenty thousand people who had signed it: and there they think proper to stop, as if he had said nothing further; leaving you to say to yourselves, What possible purpose could he have in assembling such a multitude on the very day the House was to receive the petition? Why should he urge it, when the committee had before thought it

inexpedient? And why should he refuse to present it, unless he was so attended? Hear what Mr. Middleton says. He tells you that my noble friend informed the petitioners, that if it was decided they were *not* to attend to consider how their petition should be presented, he would with the greatest pleasure go up with it *alone*; but that, if it was resolved they should attend it in person, he expected twenty thousand at the least should meet him in St. George's Fields, for that otherwise the petition would be considered as a forgery: it having been thrown out in the House and elsewhere that the repeal of the bill was not the serious wish of the people at large, and that the petition was a mere list of names in parchment, and not of men in sentiment. Mr. Middleton added, that Lord George adverted to the same objections having been made to many other petitions, and he therefore expressed an anxiety to show Parliament how many were actually interested in its success, which he reasonably thought would be a strong inducement to the House to listen to it. The language imputed to him falls in most naturally with this purpose: "I wish Parliament to see who and what you are; dress yourselves in your best clothes"—which Mr Hay (who, I suppose, had been reading the indictment) thought it would be better to call, *ARRAY YOURSELVES*. He desired that not a stick should be seen among them, and that if any man insulted another, or was guilty of any breach of the peace, he was to be given up to the magistrates. Mr. Attorney-General, to persuade you that this was all colour and deceit, says, "How was a magistrate to face forty thousand men? How were offenders in such a multitude to be amenable to the civil power?" What a shameful perversion of a plain peaceable purpose! To be sure, if the multitude had been assembled to *resist* the magistrate, offenders could not be secured. But *they themselves* were ordered to apprehend all offenders amongst them, and to deliver them up to justice. *They themselves* were to surrender their fellows to civil authority if they offended.

But it seems that Lord George ought to have *foreseen* that so great a multitude could not be collected without mischief. Gentlemen, we are not trying whether he might or ought to have *foreseen* mischief, but whether he wickedly and traitorously *PRECONCERTED AND DESIGNED IT*. But if *he* be an object of censure for not foreseeing it, what shall we say to *GOVERNMENT*, that took no step to prevent it,—that issued no proclamation warning the people of the danger and illegality of such an assembly? If a peaceable multitude, with a petition in their hands, be an army,—and if the noise and confusion inseparable from numbers, though without violence or the purpose of violence, constitute war,—what shall be said of that *GOVERNMENT* which remained from Tuesday to Friday, knowing that an army was collecting to levy war by public advertisement, yet had not a single soldier, no, nor even a constable, to protect the state?

Gentlemen, I come forth to do that for Government which its own servant, the Attorney-General, has not done. I come forth to rescue it from the eternal infamy which would fall upon its head, if the language of its own advocate were to be believed. But Government has an unanswerable defence. It neither *did* nor *could possibly* enter into the head of any man in authority to prophesy—human wisdom could not divine, that wicked and desperate men, taking advantage of the occasion which, perhaps, an imprudent zeal for religion had produced, would dishonour the cause of all religions by the disgraceful acts which followed.

Why, then, is it to be said that Lord George Gordon is a traitor, who, without proof of any hostile purpose to the Government of his country, only did not foresee,—what nobody else foresaw,—what those people whose business it is to foresee every danger that threatens the state, and to avert it by the interference of magistracy, though they could not but read the advertisement, neither did nor could possibly apprehend?

How are these observations attempted to be answered? Only by asserting, without evidence, or even reasonable argument, that all this was colour and deceit. Gentlemen, I again say that it is scandalous and reproachful, and not to be justified by any duty which can possibly belong to an advocate at the bar of an English court of justice, to declaim, without any proof, or attempt of proof, that all a man's expressions—however peaceable, however quiet, however constitutional, however loyal—are all fraud and villany. Look, gentlemen, to the issues of life, which I before called the evidence of Heaven—I call them so still—truly may I call them so—when out of a book compiled by the Crown from the petition in the House of Commons, and containing the names of all who signed it, and which was printed in order to prevent any of that number being summoned upon the jury to try this indictment, NOT ONE CRIMINAL, OR EVEN A SUSPECTED NAME, IS TO BE FOUND AMONGST THIS DEFAMED HOST OF PETITIONERS.

After this, gentlemen, I think the Crown ought in decency to be silent. I see the effect this circumstance has upon you, and I know I am warranted in my assertion of the fact. If I am not, why did not the Attorney-General produce the record of some convictions and compare it with the list? I thank them, therefore, for the precious compilation, which, though they did not produce, they cannot stand up and deny.

Solomon says, "O that my adversary would write a book!"—so say I. My adversary has written a book, and out of it I am entitled to pronounce that it cannot again be decently asserted that Lord George Gordon, in exhorting an innocent and unimpeached multitude to be peaceable and quiet, was exciting them to violence against the state.

What is the evidence, then, on which this connexion with the mob

is to be proved? *Only that they had blue cockades.* Are you or am I answerable for every man who wears a blue cockade? If a man commits murder in my livery or in yours, without command, counsel, or consent, is the murder ours? In all *cumulative*, constructive treasons, you are to judge from the tenor of a man's behaviour, not from crooked and disjointed PARTS of it. *Nemo repente fuit turpissimus.* No man can possibly be guilty of *this* crime by a *sudden* impulse of the mind, as he may of some others; and certainly Lord George Gordon stands upon the evidence at Coachmakers' Hall as pure and white as snow. He stands so upon the evidence of a man who had differed with him as to the expediency of his conduct, yet who swears that, from the time he took the chair till the period which is the subject of inquiry, there was no blame in him.

You therefore are bound, as Christian men, to believe that when he came to St. George's Fields that morning, he did not come there with *the hostile purpose* of repealing a law by rebellion.

But still it seems all his behaviour at Coachmakers' Hall was colour and deceit. Let us see, therefore, whether this body of men, when assembled, answered the description of that which I have stated to be the purpose of him who assembled them. Were they a multitude arrayed for terror or force? On the contrary, you have heard, upon the evidence of men whose veracity is not to be impeached, that they were sober, decent, quiet, peaceable tradesmen; that they were all of the better sort; all well dressed and well behaved; and that there was not a man among them who had any one weapon offensive or defensive. Sir Philip Jennings Clerke tells you he went into the Fields, that he drove through them, talked to many individuals among them, who all told him that it was not their wish to persecute the Papists, but that they were alarmed at the progress of their religion from their schools. Sir Philip further told you that he never saw a more peaceable multitude in his life; and it appears upon the oaths of all who were present, that Lord George Gordon went round among them, desiring peace and quietness.

Mark his conduct when he heard from Mr. Evans that a low, riotous set of people were assembled in Palace Yard. Mr. Evans, being a member of the Protestant Association, and being desirous that nothing bad might happen from the assembly, went in his carriage with Mr. Spinage to St. George's Fields, to inform Lord George that there were such people assembled (probably Papists) who were determined to do mischief. The moment he told him of what he heard, whatever his original plan might have been, he instantly changed it on seeing the impropriety of it. "Do you intend," said Mr. Evans, "to carry up all these men with the petition to the House of Commons?" "Oh, no! no! not by any means—I do not mean to carry them all up." "Will you give me leave," said Mr. Evans, "to

go round to the different divisions, and tell the people it is not your Lordship's purpose?" He answered—"By all means;" and Mr. Evans accordingly went, but it was impossible to guide such a number of people, peaceable as they were. They were all desirous to go forward, and Lord George was at last obliged to leave the Fields, exhausted with heat and fatigue, beseeching them to be peaceable and quiet. Mrs. Whittingham set him down at the House of Commons; and at the very time that he thus left them in perfect harmony and good order, it appears by the evidence of Sir Philip Jennings Clerke, that Palace Yard was in an uproar, filled with mischievous boys and the lowest dregs of the people.

Gentlemen; I have all along told you that the Crown was aware that it had no case of treason, without connecting the noble prisoner with consequences, which it was in some luck to find advocates to state, without proof to support it. I can only speak for myself; that small as my chance is (*as times go*) of ever arriving at high office, I would not accept of it on the terms of being obliged to produce against a fellow-citizen that which I have been witness to this day: for Mr. Attorney-General perfectly well knew the innocent and laudable motive with which the protection was given that he exhibited as an evidence of guilt: yet it was produced to insinuate that Lord George Gordon, knowing himself to be the ruler of those villains, set himself up as a saviour from their fury. We called Lord Stormont to explain this matter to you, who told you that Lord George Gordon came to Buckingham House, and begged to see the King, saying, he might be of great use in quelling the riots; and can there be on earth a greater proof of conscious innocence? For if he had been the wicked mover of them, would he have gone to the King to have confessed it, by offering to recall his followers from the mischiefs he had provoked? No! But since, notwithstanding a public protest issued by himself and the Association, reviling the authors of mischief, the Protestant cause was still made the pretext, he thought his public exertions might be useful, as they might tend to remove the prejudices which wicked men had diffused. The King thought so likewise, and therefore (as appears by Lord Stormont) refused to see Lord George till he had given the test of his loyalty by such exertions. But sure I am, our gracious Sovereign meant no trap for innocence, nor ever recommended it as such to his servants.

Lord George's language was simply this:—"The multitude pretend to be perpetrating these acts under the authority of the Protestant petition; I assure your Majesty they are not the Protestant Association, and I shall be glad to be of any service in suppressing them." I say, by God, that man is a ruffian who shall, after this, presume to build upon such honest, artless conduct as an evidence of guilt. Gentlemen, if Lord George Gordon had been guilty of high treason (as is assumed to-day) *in the face*

of the whole Parliament, how are all its members to defend themselves from the misprision of suffering such a person to go at large and to approach his Sovereign? The man who conceals the perpetration of treason is himself a traitor; but they are all perfectly safe, for nobody thought of treason till fears arising from another quarter bewildered their senses. The King, therefore, and his servants, very wisely accepted his promise of assistance, and he flew with honest zeal to fulfil it. Sir Philip Jennings Clerke tells you that he made use of every expression which it was possible for a man in such circumstances to employ. He begged them, for God's sake, to disperse and go home; declared his hope that the petition would be granted, but that rioting was not the way to effect it. Sir Philip said he felt himself bound, without being particularly asked, to say everything he could in protection of an injured and innocent man, and repeated again that there was not an art which the prisoner could possibly make use of that he did not zealously employ; but that it was all in vain. I began, says he, to tremble for myself when Lord George read the resolution of the House, which was hostile to them, and said their petition would not be taken into consideration till they were quiet. But did he say, "*Therefore go on to burn and destroy*"? On the contrary, he helped to pen that motion, and read it to the multitude, *as one which he himself had approved*. After this he went into the coach with Sheriff Pugh in the city; and there it was, in the presence of the very magistrate whom he was assisting to keep the peace, that he *publicly* signed the protection which has been read in evidence against him: although Mr. Fisher, who now stands in my presence, confessed in the Privy Council that he himself had granted similar protections to various people, *yet he was dismissed as having done nothing but his duty*.

This is the plain and simple truth—and for this just obedience to His Majesty's request do the King's servants come to-day into his Court, where he is supposed in person to sit, to turn that obedience into the crime of high treason, and to ask you to put him to death for it.

Gentlemen, you have now heard, upon the solemn oaths of honest, disinterested men, a faithful history of the conduct of Lord George Gordon from the day that he became a member of the Protestant Association to the day that he was committed a prisoner to the Tower. And I have no doubt, from the attention with which I have been honoured from the beginning, that you have still kept in your minds the principles to which I entreated you would apply it, and that you have measured it by that standard.

You have, therefore, only to look back to the whole of it together; to reflect on all you have heard concerning him; to trace him in your recollection through every part of the transaction; and, considering it with one manly, liberal view, to ask

your own honest hearts whether you can say that this noble and unfortunate youth is a wicked and deliberate traitor, who deserves by your verdict to suffer a shameful and ignominious death, which will stain the ancient honours of his house for ever.

The crime which the Crown would have fixed upon him is, that he assembled the Protestant Association round the House of Commons, not merely *to influence and persuade Parliament by the earnestness of their supplications*, but actually to coerce it *by hostile rebellious force*; that finding himself disappointed in the success of that coercion, he afterwards incited his followers to abolish the legal indulgences to Papists, which the object of the petition was to repeal, by the burning of their houses of worship and the destruction of their property, which ended at last in a general attack on the property of all orders of men, religious and civil, on the public treasures of the nation, and on the very being of the Government.

To support a charge of so atrocious and unnatural a complexion, the laws of the most arbitrary nations would require the most incontrovertible proof. Either the villain must have been taken in the overt act of wickedness, or, if he worked in secret upon others, his guilt must have been brought out by the discovery of a conspiracy, or by the consistent tenor of criminality. The very worst inquisitor that ever dealt in blood would vindicate the torture by plausibility at least, and by the semblance of truth.

What evidence, then, will a jury of Englishmen expect from the servants of the Crown of England before they deliver up a brother accused before them to ignominy and death? What proof will their consciences require? What will their plain and manly understandings accept of? What does the immemorial custom of their fathers, and the written law of this land, warrant them in demanding? Nothing less, *in any case of blood*, than the clearest and most unequivocal conviction of guilt. But in *this case* the Act has not even trusted to the humanity and justice of our general law, but has said in plain, rough, expressive terms—*provably*—that is, says Lord Coke, *not upon conjectural presumptions or inferences, or strains of wit* but upon DIRECT AND PLAIN PROOF. “For the King, Lords, and Commons,” continues that great lawyer, “did not use the word *probably*, for then a common argument might have served; but *provably*, which signifies the highest force of demonstration.” And what evidence, gentlemen of the jury, does the Crown offer to you in compliance with these sound and sacred doctrines of justice? A few broken, interrupted, disjointed words, without context or connexion, uttered by the speaker in agitation and heat, heard by those who relate them to you in the midst of tumult and confusion, and even those words, mutilated as they are, in direct opposition to, and inconsistent with, repeated and earnest declarations, delivered at the very same time, and on the very same occasion, related to you by a much greater

number of persons, and absolutely incompatible with the whole tenor of his conduct. Which of us all, gentlemen, would be safe, standing at the bar of God or man, if we were not to be judged by the regular current of our lives and conversations, but by detached and unguarded expressions, picked out by malice, and recorded, without context or circumstances, against us? Yet such is the only evidence on which the Crown asks you to dip your hands and to stain your consciences in the innocent blood of the noble and unfortunate youth who now stands before you—on the single evidence of the words you have heard from their witnesses (*for of what but words have you heard?*) which, even if they had stood uncontroverted by the proofs that have swallowed them up, or unexplained by circumstances which destroy their malignity, could not, *at the very worst*, amount in law to more than a breach of the Act against tumultuous petitioning (if such an Act still exists); since the worst malice of his enemies has not been able to bring up one single witness to say that he ever *directed, countenanced, or approved* rebellious force against the Legislature of his country. It is therefore a matter of astonishment to me that men can keep the natural colour in their cheeks when they ask for human life, even on the Crown's original case, *though the prisoner had made no defence*. But will they still continue to ask for it after what they have heard? I will just remind the Solicitor-General, before he begins his reply, what matter he has to encounter. He has to encounter this:—That the going up in a body was not even originated by Lord George, but by others in his absence: That when proposed by him officially as chairman, it was adopted by the *whole* Association, and consequently was *their* act as much as his: That it was adopted, not in a conclave, but with open doors, and the resolution published to all the world: That it was known, of course, to the Ministers and magistrates of the country, who did not even signify to him, or to anybody else, its illegality or danger: That decency and peace were enjoined and commanded: That the regularity of the procession, and those badges of distinction, which are now cruelly turned into the charge of an hostile array against him, were expressly and *publicly* directed *for the preservation of peace and the prevention of tumult*: That while the house was deliberating, he repeatedly entreated them to behave with decency and peace, and to retire to their houses; *though he knew not that he was speaking to the enemies of his cause*: That when they at last dispersed, no man thought or imagined that treason had been committed: That he retired to bed, where he lay, unconscious that ruffians were ruining him by their disorders in the night: That on Monday he published an advertisement reviling the authors of the riots, and, as the Protestant cause had been wickedly made the pretext for them, solemnly enjoined all who wished well to it to be obedient to the

laws. (*Nor has the Crown even attempted to prove that he had either given, or that he afterwards gave, secret instructions in opposition to that public admonition.*) That he afterwards begged an audience to receive the King's commands: That he waited on the Ministers: That he attended his duty in Parliament; and when the multitude, *amongst whom there was not a man of the Associated Protestants*, again assembled on the Tuesday, under pretence of the Protestant cause, he offered his services, and read a resolution of the House to them, accompanied with every expostulation which a zeal for peace could possibly inspire: That he afterwards, in pursuance of the King's direction, attended the magistrates in their duty; honestly and honourably exerting all his powers to quell the fury of the multitude; a conduct which, to the dishonour of the Crown, has been scandalously turned against him, by criminating him with protections granted publicly in the coach of the Sheriff of London, whom he was assisting in his office of magistracy—although protections of a similar nature were, to the knowledge of the whole Privy Council, granted by Mr Fisher himself, who now stands in my presence unaccused and unreprieved, but who, if the Crown that summoned him *durst have called him*, would have dispersed to their confusion the slightest imputation of guilt.

What, then, has produced this trial for high treason, or given it, when produced, the seriousness and solemnity it wears? What but the inversion of all justice, by judging from *consequences*, instead of from *causes* and *designs*? What but the artful manner in which the Crown has endeavoured to blend the petitioning in a body, and the zeal with which an animated disposition conducted it, with the melancholy crimes that followed?—crimes which the shameful indolence of our magistrates, which the total extinction of all police and government, suffered to be committed in broad day, and in the delirium of drunkenness, by an unarmed banditti, without a head, without plan or object, and without a refuge from the instant gripe of justice,—a banditti with whom the Associated Protestants and their president had no manner of connexion, and whose cause they overturned, dishonoured, and ruined.

How unchristian, then, is it to attempt, without evidence, to infect the imaginations of men who are sworn dispassionately and disinterestedly to try the trivial offence of assembling a multitude with a petition to repeal a law (which has happened so often in all our memories) by blending it with the fatal catastrophe on which every man's mind may be supposed to retain some degree of irritation? *Oh, fie! Oh, fie!* Is the intellectual seat of justice to be thus impiously shaken? Are your benevolent propensities to be thus disappointed and abused? Do they wish you, while you are listening to the evidence, to connect it with unforeseen consequences, in spite of reason and truth? Is it their object to hang the millstone of prejudice around his innocent neck to sink him? If there be

such men, may Heaven forgive them for the attempt, and inspire you with fortitude and wisdom to discharge your duty with calm, steady, and reflecting minds!

Gentlemen, I have no manner of doubt that you will. I am sure you cannot but see, notwithstanding my great inability, increased by a perturbation of mind (arising, thank God! from no dishonest cause), that there has been not only no evidence on the part of the Crown to fix the guilt of the late commotions upon the prisoner, but that, on the contrary, we have been able to resist the *probability*—I might almost say the *possibility*—of the charge, not only by living witnesses, whom we only ceased to call because the trial would never have ended, but by the evidence of all the blood that has paid the forfeit of that guilt already,—an evidence that I will take upon me to say is the strongest, and most unanswerable, which the combination of natural events ever brought together since the beginning of the world for the deliverance of the oppressed; since in the late numerous trials for acts of violence and depredation, though conducted by the ablest servants of the Crown, with a laudable eye to the investigation of the subject which now engages us, no one fact appeared which showed any plan, any object, any leader; since out of forty-four thousand persons who signed the petition of the Protestants, *not one* was to be found among those who were convicted, tried, or even apprehended on suspicion; and since out of all the felons who were let loose from prisons, and who assisted in the destruction of our property, not a single wretch was to be found who could even attempt to save his own life by the plausible promise of giving evidence to-day.

What can overturn such a proof as this? Surely a good man might, without superstition, believe that such an union of events was something more than natural, and that the Divine Providence was watchful for the protection of innocence and truth.

I may now therefore relieve you from the pain of hearing me any longer, and be myself relieved from speaking on a subject which agitates and distresses me. Since Lord George Gordon stands clear of every hostile act or purpose against the Legislature of his country, or the properties of his fellow-subjects; since the whole tenor of his conduct repels the belief of the *traitorous intention* charged by the indictment, my task is finished. I shall make no address to your passions. I will not remind you of the long and rigorous imprisonment he has suffered. I will not speak to you of his great youth, of his illustrious birth, and of his uniformly animated and generous zeal in Parliament for the constitution of his country. Such topics might be useful in the balance of a doubtful case; yet even then I should have trusted to the honest hearts of Englishmen to have felt them without excitation. At present, the plain and rigid rules of justice and truth are sufficient to entitle me to your verdict.

*SPEECH in the Court of King's Bench against a New Trial in
the Case of Breach of Promise of Marriage, MORTON v.
FENN.*

THE SUBJECT.

THE following speech may appear, at first glance, to be scarcely worthy of a place in a collection of pleadings upon so many interesting subjects ; but it will be found, on examination, to contain very important principles of law. The occasion of it was shortly this. A woman of the name of Morton, who was the plaintiff, in a cause tried before Lord Mansfield at the sittings at Guildhall, in London, had hired herself to be housekeeper to a Mr Fenn, who was the defendant, an old and infirm man. Mrs Morton, the plaintiff, was not a young woman, and had no great personal recommendations. The old gentleman, however, thought otherwise, and, to induce his housekeeper to cohabit with him, had promised to marry her, the breach of which promise was the foundation of an action to recover damages.

The cause was conducted by Lord Erskine, who had not then been long at the bar. There is no note of what passed at the trial, nor is it material, except that, after the plaintiff's case had been opened, and, after some cross-examination of the witness who proved the promise, with a view to ridicule the person and manners of the plaintiff, Mr Wallace, then Attorney-General, and who was a very able *nisi prius* advocate, endeavoured, as the lawyers call it, without calling witnesses, to laugh the cause out of court, by representing that neither of the parties to the contract had any loss from the breach of it, as the plaintiff was an ugly old woman, and the defendant, who was then in court, and whom he pointed out to the jury to make the scene more ludicrous, was not a person, in the loss of whom, as a *husband*, there could be any claim to more than a *farthing* damages. The jury, however, returned a verdict of *two thousand pounds* ; and, in the term which followed, a rule having been obtained by the Attorney-General for setting aside the verdict, and for a new trial, on the ground that the damages were *excessive*, the following very short speech was made by Mr Erskine, maintaining his client's right to the whole money, and denying the jurisdiction of the Court, *in such a case*, to impeach the verdict of the jury.

Perhaps there is no subject more important in the whole volumes of the law than that which regards the distinct jurisdictions of judges and juries in that mixed form of trial which is the peculiar and the best feature in the British constitution. The subject, as it applies to criminal cases, is treated of in every possible point of view in the

Dean of St. Asaph's case (p. 90 of the present volume); but it is most important, also (even as it regards *civil* cases) that the distinct offices of judges and juries should be thoroughly understood and rigidly maintained. If, in civil actions, the Court had no jurisdiction to set aside verdicts, and to grant new trials, even in cases where the jury may either have mistaken the law, or where they may have assessed damages by no means commensurate with the loss of property, or with the injury sustained by the party complaining; if in cases where juries may have assessed damages either manifestly and grossly excessive, or unjustly inadequate, the Court had no jurisdiction to send the case to another hearing for more mature consideration, trial by jury, the boast and glory of our country, would be as great a national evil as it is now a benefit and a blessing;—but if, on the other hand, revisions of verdicts were suffered to take place, unless in cases of *manifest* injustice; if new trials were to be awarded, because judges might differ from juries upon occasions where men of sense and justice might reasonably differ from one another, such a proceeding would be the substitution of judicial authority, in fixed magistrates, for the discretion lodged by the constitution in the popular jurisdictions of the country. Every pleading, therefore, which accurately marks out and firmly maintains those salutary boundaries, *though already very well understood and ascertained*, is worthy of a faithful report. On the present occasion, the Court refused to set aside the verdict, upon the principles contained in the short speech which follows.

THE SPEECH.

My LORD,—The jurisdiction exercised by the Court in cases of excessive damages stands upon so sensible and so clear a principle, that the bare stating of it must, in itself, be an answer to the rule for a new trial which the defendant has obtained.

In cases of pecuniary contracts, the damage is matter of *visible* and *certain* calculation; the Court can estimate it as well as the jury; and though it never interferes on account of those variations which may be fairly supposed to have arisen from the different degrees of credit given to the evidence, yet where the jury steps beyond every possible estimate of the injury arising from the contract broken, the Court must say that the verdict is wrong; because it is a subject upon which there can be no difference of judgment amongst reasonable men; the advantage of a pecuniary contract, and, consequently, the loss following from the breach of it, being a matter of dry calculation. In such cases, therefore, the Court does not set up a jurisdiction over damages in violation, or control, of the constitutional rights of juries, but only prevents the operation of either a visible, certain, palpable mistake, or a wilful act of injustice: this is the whole—and without such power in the Court, since attaints have gone into disuse, the constitution would be wretchedly defective.

The same principles apply likewise to all actions of tort founded on injuries to property; the measure of damages in such actions being equally certain. As much as the plaintiff's property is diminished in value by the act of the defendant, so much shall the defendant pay; for he must place the plaintiff in the same condition as if the wrong had not been committed. In such discussions there must be, likewise, many shades of difference in the judgments of men respecting the loss and inconvenience suffered by acts injurious to property, and, as far as these differences can have any reasonable operation, juries have an uncontrolled jurisdiction; as the Court will never set aside their verdict for a difference which might fairly subsist upon the evidence between intelligent and unprejudiced men: but here, too, when they go beyond the *utmost limits of discreet judgment*, the Court interferes, because there is in all cases of injury to *property* a *pecuniary* calculation to govern the jurisdiction it exercises; all attacks on property resolving themselves into pecuniary loss, pecuniary damages are easily adjusted.

But there is a catalogue of wrongs over which juries, where neither favour nor corruption can be alleged against them, ought to have an uncontrolled dominion; not because the Court has not the same superintending jurisdiction in these as in other cases, but because it can rarely have any standard by which to correct the error of the verdict.

There are other rights which society is instituted to protect as well as the right of property, which are much more valuable than property, and for the deprivation of which no adequate compensation in money can be made. What Court, for instance, shall say, in an action for slandering an honest and virtuous character, that a jury has overrated the wrong which honour and sensibility endure at the very shadow of reproach? If a wife is seduced by the adulterer from her husband, or a daughter from the protection of her father, can the Court say this or that sum of money is too much for villany to pay, or for misery to receive? In neither of these instances can the jury compel the defendant to make an adequate atonement, for neither honour nor happiness can be estimated in gold; and the law has only recourse to pecuniary compensation from the want of power to make the sufferer any other.

These principles apply, in a strong degree, to the case before the Court. It is, indeed, a suit for breach of a contract, but not of a *pecuniary* contract; injury to *property* is an ingredient—but not the *sole* ingredient of the action: there is much personal wrong; and of a sort that is irreparable. There is, upon the evidence reported by your Lordship, loss of health, loss of happiness, loss of protection from relations and friends, loss of honour which had been before maintained (in itself the full measure of ruin to a woman); and, added to all these, there is loss of property in the

disappointment of a permanent settlement for life : and for all this, the jury have given two thousand pounds, not more than a year's interest of the defendant's property.

I am, therefore, at a loss to discover any circumstance on the face of your Lordship's report, from which alone the Court must judge of the evidence, that can warrant a judgment that the jury have done wrong ; for independent of their exclusive right to settle the degrees of credit due to the witnesses, what was there at the trial, or what is there *now*, to bring their credit into question ? Their characters stood before the jury, and stand before the Court, unimpeached ; and Mr. Wallace's whole argument, if indeed, jest is to be considered as reason, hangs upon the inadmissible supposition that the witnesses exaggerated the case. But the *jury* have decided on their veracity ; and, therefore, before the Court can grant a new trial, it must say, that the verdict is excessive and illegal *upon the facts as reported by your Lordship, taking them to be literally as they proceeded from the mouths of the witnesses.* Upon this state of the case, and it is impossible to remove me from it, I think it is not very difficult to make up the defendant's bill for two thousand pounds.

The plaintiff appears to be the daughter of a clergyman, and to have been bred up with the notions of a gentlewoman ; she had been before respectably married, in which condition, and during her widowhood, she had preserved her character, and had been protected and respected by her relations and friends. It is probable that her circumstances were very low, from the character in which she was introduced to the defendant, who, being an old and infirm man, was desirous of some elderly person as a housekeeper : and no imputation can justly be cast upon the plaintiff for consenting to such an introduction ; for, by Mr. Wallace's favour, the jury had a view of this defendant, and the very sight of him rebutted every suspicion that could possibly fall upon a woman of any age, constitution, or complexion. I am sure everybody who was in court must agree with me, that all the diseases catalogued in the dispensatory seemed to be running a race for his life, though the asthma appeared to have completely distanced his competitors, as the fellow was blowing like a smith's bellows the whole time of the trial. His teeth being all gone, I shall say nothing of his gums ; and, as to his shape, to be sure a bass fiddle is perfect gentility compared with it. I was surprised, therefore, that Mr. Wallace should be the first to point out this mummy to the jury, and to comment on his imperfections ; because they proved to a demonstration that the plaintiff could have no other possible inducement or temptation to cohabit with him, but that express and solemn promise of marriage which was the foundation of the action and the aggravation of the wrong. But besides such plain presumption, it is directly *in proof* that she never DID cohabit with him before, nor until

under this express promise and condition ; so that the whole argument is, that disease and infirmity are excuses for villany, and extinction of vigour an apology for debauchery. The age of the plaintiff, who is a woman towards fifty, was another topic ; so that a crime is argued to be *less* in proportion as the temptation to commit it is *diminished*.

It would be in the defendant's favour if the promise had been improvident and thoughtless, suddenly given, and as suddenly repented ; but the very reverse is in evidence, as she lived with him on these terms for several months, and at the end of them, he repeated his promises, and expressed the fullest approbation of her conduct. It is further in proof, that she fell into bad health on her discovering the imposition practised on her, and his disposition to abandon her. He himself admitted her vexation on that account to be the cause of her illness, and his behaviour under that impression was base : having determined to get rid of her, he smuggled her out of his own house to her sister's, under pretence that change of air would recover her ; and continued to amuse the poor creature with fresh promises and protestations, till, without provocation, and without notice or apology, he married another woman, young enough to be his daughter, and who, I hope, will manifest her affection by furnishing him with a pair of *horns*, sufficient to defend himself against the sheriff when he comes to levy the money upon this verdict.

By this marriage, the poor woman is abandoned to poverty and disgrace, cut off from the society of her relations and friends, and shut out from every prospect of a future settlement in life suitable to her education and her birth : for having neither beauty nor youth to recommend her, she could have no pretensions but in that good conduct and discretion which, by trusting to the honour of the defendant, she has forfeited and lost.

On all these circumstances, no doubt, the jury calculated the damages, and how can your Lordship unravel or impeach the calculation ? They are not like the items in a tradesman's account, or the entries in a banker's book ; it is—

For loss of character, so much ;

For loss of health, so much ;

For loss of the society and protection of relations and friends, so much ;

And for the loss of a settlement for life, so much.

How is the Court to audit this account, so as to say, that, in every possible state of it, the jury has done wrong ? How, my Lord, are my observations, weak as they are as proceeding from me, but strong as supported by the subject, to be answered ?—only by ridicule, which the facts do not furnish, and at which even folly, when coupled with humanity or justice, cannot smile. We are, besides, not in a theatre, but in a court of law ; and when judges

are to draw grave conclusions from facts, which not being under re-examination, cannot be distorted by observation, they will hardly be turned aside from justice by a jest.

I therefore claim for the plaintiff the damages which the jury gave her under these directions from your Lordship, "That they were so entirely within *their* province, that you would not lead their judgments by a single observation."

The rule for a new trial was discharged.

SPEECH at Shrewsbury, 6th August 1784, for the Rev. WILLIAM DAVIES SHIPLEY, Dean of St. Asaph, on his Trial for Publishing a Seditious Libel.

THE SUBJECT.

IN the year 1783, soon after the conclusion of the calamitous war in America, the public attention was very warmly and generally turned throughout this country towards the necessity of a reform in the representation of the people in the House of Commons. Several societies were formed in different parts of England and Wales for the promotion of it ; and the Duke of Richmond and Mr. Pitt, then the Minister, took the lead in bringing the subject before Parliament.

To render this great national object intelligible to the ordinary ranks of the people, Sir William Jones, then an eminent barrister in London, and afterwards one of the judges of the Supreme Court of Judicature at Bengal, composed a dialogue between a scholar and a farmer as a vehicle for explaining to common capacities the great principles of society and government, and for showing the defects in the representation of the people in the British Parliament. Sir William Jones having married a sister of the Dean of St. Asaph, he became acquainted with and interested in this dialogue, and recommended it strongly to a committee of gentlemen of Flintshire who were at that time associated for the object of reform, where it was read, and made the subject of a vote of approbation. The Court party, on the other hand, having made a violent attack upon this committee for the countenance thus given to the dialogue, the Dean of St. Asaph, considering (as he himself expressed it) that the best means of justifying the composition, and those who were attacked for their approbation of it, was to render it public, that the world might decide the controversy, sent it to be printed, prefixing to it the following advertisement :—

“ A short defence hath been thought necessary against a violent and groundless attack upon the Flintshire Committee, for having testified their approbation of the following dialogue, which hath been publicly branded with the most injurious epithets ; and it is conceived that the sure way to vindicate this little tract from so unjust a character will be as publicly to produce it. The friends of the Revolution will instantly see that it contains no principle which has not the support of the highest authority, as well as the clearest reason.

“ If the doctrines which it slightly touches in a manner suited to the nature of the dialogue be ‘ seditious, treasonable, and diabolical,’ Lord Somers was an incendiary, Locke a traitor, and the Convention Parliament a pandæmonium ; but if those names are the glory and boast of England, and if that Convention secured our liberty and happiness,

then the doctrines in question are not only just and rational, but constitutional and salutary ; and the reproachful epithets belong wholly to the system of those who so grossly misapplied it."

The dialogue being published, the late Mr. Fitzmaurice, brother to the late Marquis of Lansdowne, preferred a bill of indictment against the Dean for a libel at the great sessions for Denbighshire, where the cause stood to be tried at Wrexham assizes in the summer of 1783, but was put off by an application to the Court, founded upon the circulation of papers to prejudice the trial. At the spring assizes for Wrexham, in 1784, the cause again stood for trial, and the defendant attended by his counsel a second time, when it was removed by the prosecutor into the Court of King's Bench, and came on at last to be tried at Shrewsbury, as being in the next adjacent English county.

The indictment set forth, "That William Davies Shipley, late of Llannerch Park, in the parish of Henllan, in the county of Denbigh, clerk, being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse, amongst the subjects of this realm, discontents, jealousies, and suspicions of our Lord the King and his government, and disaffection and disloyalty to the person and government of our Lord the now King ; and to raise very dangerous seditious and tumults within this kingdom ; and to draw the government of this kingdom into great scandal, infamy, and disgrace ; and to incite the subjects of our Lord the King to attempt, by force and violence, and with arms, to make alterations in the government, state, and constitution of this kingdom, on the 1st day of April, in the twenty-third year of the reign of our Sovereign Lord George the Third, now King of Great Britain, and so forth, at Wrexham, in the county of Denbigh aforesaid, wickedly and seditiously published, and caused and procured to be published, a certain false, wicked, malicious, seditious, and scandalous libel of and concerning our said Lord the King, and the government of this realm, in the form of a dialogue between a supposed gentleman and a supposed farmer, wherein the part of the supposed gentleman, in the supposed dialogue, is denoted by the letter G, and the part of the supposed farmer, in such supposed dialogue, is denoted by the letter F, entitled, 'The Principles of Government, in a Dialogue between a Gentleman and a Farmer.' In which said libel are contained the false, wicked, malicious, seditious, and scandalous matters following" (to wit).

The indictment then set forth verbatim the following dialogue, without any averments or innuendoes, except those above-mentioned, viz., that by "G" throughout the dialogue was meant *Gentleman*, and by "F" *Farmer*. By "The King" (when it occurred), *The King of Great Britain* ; and by "Parliament" (when it occurred), *The Parliament of this kingdom*. The dialogue, therefore, as it follows, is in fact the whole indictment, only without the constant repetition that F means Farmer, K King, and P Parliament.

"The Principles of Government, in a Dialogue between a Gentleman and a Farmer.

"F. Why should humble men like me sign or set marks to petitions

of this nature? It is better for us farmers to mind our husbandry, and leave what we cannot comprehend to the King and Parliament.

"G. You can comprehend more than you imagine; and, as a free member of a free state, have higher things to mind than you may conceive.

"F. If by free you mean out of prison, I hope to continue so as long as I can pay my rent to the squire's bailiff; but what is meant by a free state?

"G. Tell me first what is meant by a club in the village, of which I know you to be a member?

"F. It is an assembly of men who meet after work every Saturday to be merry and happy for a few hours in the week.

"G. Have you no other object but mirth?

"F. Yes; we have a box into which we contribute equally from our monthly or weekly savings, and out of which any members of the club are to be relieved in sickness or poverty; for the parish officers are so cruel and insolent, that it were better to starve than apply to them for relief.

"G. Did they, or the squire, or the parson, or all together, compel you to form this society?

"F. Oh no; we could not be compelled; we formed it by our choice.

"G. You did right. But have you not some head or president of your club?

"F. The master for each night is chosen by all the company present the week before.

"G. Does he make laws to bind you in case of ill-temper or misbehaviour?

"F. He make laws! He bind us! No; we have all agreed to a set of equal rules, which are signed by every new-comer, and were written in a strange hand by young Spelman, the lawyer's clerk, whose uncle is a member.

"G. What should you do if any member were to insist on becoming perpetual master, and on altering your rules at his arbitrary will and pleasure?

"F. We should expel him.

"G. What if he were to bring a sergeant's guard, when the militia are quartered in your neighbourhood, and insist upon your obeying him?

"F. We would resist if we could; if not, the society would be broken up.

"G. Suppose that, with his sergeant's guard, he were to take the money out of the box, or out of your pockets?

"F. Would not that be a robbery?

"G. I am seeking information from you. How should you act upon such an occasion?

"F. We should submit perhaps at that time; but should afterwards try to apprehend the robbers.

"G. What if you could not apprehend them?

"F. We might kill them, I should think; and if the King would not pardon us, God would.

"G. How could you either apprehend them, or, if they resisted, kill them, without a sufficient force in your own hands ?

"F. Oh ! we are all good players at single stick, and each of us has a stout cudgel or quarter-staff in the corner of his room.

"G. Suppose that a few of the club were to domineer over the rest, and insist upon making laws for them ?

"F. We must take the same course ; except it would be easier to restrain one man than a number ; but we should be the majority with justice on our side.

"G. A word or two on another head. Some of you, I presume, are no great accountants ?

"F. Few of us understand accounts ; but we trust old Lilly, the schoolmaster, whom we believe to be an honest man ; and he keeps the key of our box.

"G. If your money should, in time, amount to a large sum, it might not, perhaps, be safe to keep it at his house, or in any private house.

"F. Where else should we keep it ?

"G. You might choose to put it into the funds, or to lend it the squire who has lost so much lately at Newmarket, taking his bond on some of his fields, as your security for payment, with interest.

"F. We must, in that case, confide in young Spelman, who will soon set up for himself, and, if a lawyer can be honest, will be an honest lawyer.

"G. What power do you give to Lilly, or should you give to Spelman, in the case supposed ?

"F. No power ; we should give them both a due allowance for their trouble, and should expect a faithful account of all they had done for us.

"G. Honest men may change their nature. What if both or either of them were to deceive you ?

"F. We should remove them, put our trust in better men, and try to repair our loss.

"G. Did it never occur to you that every state or nation was only a great club ?

"F. Nothing ever occurred to me on the subject ; for I never thought about it.

"G. Though you never thought before on the subject, yet you may be able to tell me why you suppose men to have assembled, and to have formed nations, communities, or states, which all mean the same thing ?

"F. In order, I should imagine, to be as happy as they can while they live.

"G. By happy, do you mean merry only ?

"F. To be as merry as they can without hurting themselves or their neighbours, but chiefly to secure themselves from danger, and to relieve their wants.

"G. Do you believe that any king or emperor compelled them to associate ?

"F. How could one man compel a multitude ?—a king or an emperor, I presume, is not born with a hundred hands.

"G. When a prince of the blood shall, in any country, be so distinguished by nature, I shall then, and then only, conceive him to be a

greater man than you : but might not an army, with a king or general at their head, have compelled them to assemble ?

" F. Yes ; but the army must have been formed by their own choice ; one man of a few can never govern many without their consent.

" G. Suppose, however, that a multitude of men, assembled in a town or city, were to choose a king or governor ; might they not give him high power and authority ?

" F. To be sure ; but they would never be so mad, I hope, as to give him a power of making their laws.

" G. Who else should make them ?

" F. The whole nation or people.

" G. What if they disagreed ?

" F. The opinion of the greater number, as in our village-clubs, must be taken, and prevail.

" G. What could be done if the society were so large that all could not meet at the same place ?

" F. A greater number must choose a less.

" G. Who should be the choosers ?

" F. All who are not upon the parish in our club. If a man asks relief of the overseer, he ceases to be one of us, because he must depend upon the overseer.

" G. Could not a few men, one in seven, for instance, choose the assembly of law-makers as well as a larger number ?

" F. As conveniently, perhaps ; but I would not suffer any man to choose another who was to make laws, by which my money or my life might be taken from me.

" G. Have you a freehold in any county of forty shillings a year ?

" F. I have nothing in the world but my cattle, implements of husbandry, and household goods, together with my farm, for which I pay a fixed rent to the squire.

" G. Have you a vote in any city or borough ?

" F. I have no vote at all ; but am able, by my honest labour, to support my wife and four children ; and, whilst I act honestly, I may defy the laws.

" G. Can you be ignorant that the Parliament to which members are sent by this county, and by the next market-town, have power to make new laws, by which you and your family may be stripped of your goods, thrown into prison, and even deprived of life ?

" F. A dreadful power ! Having business of my own, I never made inquiries concerning the business of Parliament ; but imagined the laws had been fixed for many hundred years.

" G. The common laws to which you refer are equal, just, and humane ; but the King and Parliament may alter them when they please.

" F. The King ought therefore to be a good man, and the Parliament to consist of men equally good.

" G. The King alone can do no harm ; but who must judge the goodness of Parliament men ?

" F. All those whose property, freedom, and lives may be affected by their laws.

"G. Yet six men in seven who inhabit this kingdom have, like you, no votes; and the petition which I desired you to sign has nothing for its object but the restoration of you all to the right of choosing those law-makers, by whom your money or your lives may be taken from you: attend while I read it distinctly.

"F. Give me your pen. I never wrote my name, ill as it may be written, with greater eagerness.

"G. I applaud you, and trust that your example will be followed by millions. Another word before we part. Recollect your opinion about your club in the village, and tell me what ought to be the consequence if the King alone were to insist on making laws, or on altering them at his will and pleasure.

"F. He, too, must be expelled.

"G. Oh! but think of his standing army, and of the militia, which now are his in substance, though ours in form.

"F. If he were to employ that force against the nation, they would, and ought to resist him, or the state would cease to be a state.

"G. What if the great accountants, and great lawyers, the Lillys and Spelmans of the nation, were to abuse their trust, and cruelly injure, instead of faithfully serving, the public?

"F. We must request the King to remove them, and make trial of others; but none should implicitly be trusted.

"G. But what if a few great lords or wealthy men were to keep the King himself in subjection, yet exert his force, lavish his treasure, and misuse his name, so as to domineer over the people, and manage the Parliament?

"F. We must fight for the King and ourselves.

"G. You talk of fighting, as if you were speaking of some rustic engagement at a wake; but your quarter-staffs would avail you little against bayonets.

"F. We might easily provide ourselves with better arms.

"G. Not so easily. When the moment of resistance came, you would be deprived of all arms; and those who should furnish you with them, or exhort you to take them up, would be called traitors, and probably put to death.

"F. We ought always, therefore, to be ready, and keep each of us a strong firelock in the corner of his bedroom.

"G. That would be legal as well as rational. Are you, my honest friend, provided with a musket?

"F. I will contribute no more to the club, and purchase a firelock with my savings.

"G. It is not necessary. I have two, and will make you a present of one, with complete accoutrements.

"F. I accept it thankfully, and will converse with you at your leisure on other subjects of this kind.

"G. In the meanwhile, spend an hour every morning in the next fortnight in learning to prime and load expeditiously, and to fire and charge with bayonet firmly and regularly. I say every morning, because, if you exercise too late in the evening, you may fall into some of the legal snares, which have been spread for you by those gentle-

men who would rather secure game for their table than liberty for their nation.

F. "Some of my neighbours, who have served in the militia, will readily teach me : and perhaps the whole village may be persuaded to procure arms, and learn their exercise.

"G. It cannot be expected that the villagers should purchase arms ; but they might easily be supplied, if the gentry of the nation would spare a little from their vices and luxury.

"F. May they turn to some sense of honour and virtue !

"G. Farewell, at present, and remember, that a free state is only a more numerous and more powerful club ; and that he only is a free man who is member of such a state.

"F. Good-morning, sir : you have made me wiser and better than I was yesterday ; and yet, methinks, I had some knowledge in my own mind of this great subject, and have been a politician all my life without perceiving it."

This dialogue (as above set forth verbatim from the indictment) with the intentions, as alleged in the introductory part, constituted the charge, and the publication of it by the Dean's direction constituted the proof.

On the Dean's part, the above-mentioned advertisement prefixed to it was given in evidence to show with what intention he published it, and his conduct in general relating to it was proved. Witnesses were also called to his general character as a good subject.

Mr Bearcroft, as counsel for the Crown, having addressed the jury in a very able and judicious speech, and the evidence being closed for the Crown, Mr Erskine spoke as follows for the Dean of St. Asaph.

THE SPEECH.

GENTLEMEN OF THE JURY,—My learned and respectable friend having informed the Court that he means to call no other witnesses to support the prosecution, you are now in possession of the whole of the evidence on which the prosecutor has ventured to charge my reverend client, the Dean of St. Asaph, with a seditious purpose to excite disloyalty and disaffection to the person of his King, and an armed rebellion against the state and constitution of his country ; which evidence is nothing more than his direction to another to publish this dialogue, containing in itself nothing seditious, with an advertisement prefixed to it containing a solemn protest against all sedition.

The only difficulty, therefore, which I feel in resisting so false and malevolent an accusation is, to be able to repress the feeling excited by its folly and injustice within those bounds which may leave my faculties their natural and unclouded operations ; for I solemnly declare to you, that if he had been indicted as a libeller of our holy religion only for publishing that the world was made by its Almighty Author, my astonishment could not have been greater

than it is at this moment, to see the little book which I hold in my hand presented by a grand jury of English subjects as a libel upon the government of England. Every sentiment contained in it (if the interpretations of words are to be settled, not according to fancy, but by the common rules of language) is to be found in the brightest pages of English literature, and in the most sacred volumes of English laws: if any one sentence from the beginning to the end of it be seditious or libellous, the Bill of Rights (to use the language of the advertisement prefixed to it) was a seditious libel,—the Revolution was a wicked rebellion,—the existing government is a traitorous conspiracy against the hereditary monarchy of England,—and our gracious Sovereign, whose title I am persuaded we are all of us prepared to defend with our blood, is a usurper of the crowns of these kingdoms.

That all these absurd, preposterous, and treasonable conclusions follow necessarily and unavoidably from a conclusion *upon this evidence*,—that this dialogue is a libel,—following the example of my learned friend, who has pledged *his* personal veracity in support of his sentiments, I assert upon *my* honour to be my unaltered, and I believe I may say unalterable opinion, formed upon the most mature deliberation; and I choose to place that opinion in the very front of my address to you, that you may not in the course of it mistake the energies of truth and freedom for the zeal of professional duty.

This declaration of my own sentiments, even if my friend had not set me the example by giving you his, I should have considered to be my duty in this cause; for although, in ordinary cases, where the private right of the party accused is alone in discussion, and no general consequences can follow from the decision, the advocate and the private man ought, in sound discretion, to be kept asunder; yet there are occasions when such separation would be treachery and meanness. In a case where the dearest rights of society are involved in the resistance of a prosecution,—where the party accused is (as in this instance) but a mere name,—where the whole community is wounded through his sides,—and where the conviction of the private individual is the subversion or surrender of public privileges, the advocate has a more extensive charge:—the duty of the patriot citizen then mixes itself with his obligation to his client, and he disgraces himself, dishonours his profession, and betrays his country, if he does not step forth in his personal character and vindicate the rights of all his fellow-citizens which are attacked through the medium of the man he is defending. Gentlemen, I do not mean to shrink from that responsibility upon this occasion; I desire to be considered the fellow-criminal of the defendant, if by your verdict he should be found one, by publishing in advised speaking (which is substantially equal in guilt to the publication that he is accused of before you) my hearty approba-

tion of every sentiment contained in this little book ; promising here, in the face of the world, to publish them upon every suitable occasion amongst that part of the community within the reach of my precept, influence, and example. If there be any more prosecutors of this denomination abroad among us, they know how to take advantage of these declarations.*

Gentlemen, when I reflect upon the danger which has often attended the liberty of the press in former times from the arbitrary proceedings of abject, unprincipled, and dependent judges, raised to their situations without abilities or worth in proportion to their servility to power, I cannot help congratulating the public that you are to try this indictment with the assistance of the learned Judge before you ;—much too instructed in the laws of this land to mislead you by mistake, and too conscientious to misinstruct you by design.

The days indeed I hope are now past when judges and jurymen upon state trials were constantly pulling in different directions ; the Court endeavouring to annihilate altogether the province of the jury, and the jury in return listening with disgust, jealousy, and alienation to the directions of the Court. Now they may be expected to be tried with that harmony which is the beauty of our legal constitution ;—the jury preserving their independence in judging of the intention, which is the essence of every crime ; but listening to the opinion of the judge upon the evidence and upon the law with that respect and attention which dignity, learning, and honest intention in a magistrate must and ought always to carry along with them.

Having received my earliest information in my profession from the learned Judge himself,† and having daily occasion to observe his able administration of justice, you may believe that I anticipate nothing from the bench unfavourable to innocence ; and I have experienced his regard in too many instances not to be sure of every indulgence that is personal to myself.

These considerations enable me with more freedom to make my address to you upon the merits of this prosecution, in the issue of which your own general rights, as members of a free state, are not less involved than the private rights of the individual I am defending.

Gentlemen, my reverend friend stands before you under circumstances new and extraordinary, and I might add harsh and cruel ; he is not to be tried in the forum *where he lives*, according to the wise and just provisions of our ancient laws ;—he is not to be tried

* It will be seen hereafter, that when the dialogue was brought before the Court by Mr Erskine's motion to arrest the judgment, the Court was obliged to declare that it contained no illegal matter.

† Mr Erskine was for some time one of the Judge's pupils as a special pleader before he was raised to the bench.

by the vicinage, who from their knowledge of general character and conduct, were held by our wise and humane ancestors to be the fittest, or rather the only, judges in criminal cases:—he has been deprived of that privilege by the arts of the prosecutor, and is called before *you*, who live in *another* part of the country, and who, except by vague reputation, are utter strangers to him.

But the prosecution itself, abandoned by the public, and left, as you cannot but know it is, in the hands of an individual, is a circumstance not less extraordinary and unjust,—unless as it palpably refutes the truth of the accusation. For if this little book be a libel at all, it is a libel upon *the state and constitution of the nation*, and *not* upon any person under the protection of its laws: it attacks the character of no man in this or any other country; and therefore no man is *individually or personally* injured or offended by it. If it contain matter dangerous or offensive, *the state alone* can be endangered or offended.

And are we, then, reduced to that miserable condition in this country, that, if discontent and sedition be publicly exciting amongst the people, the charge of suppressing it devolves upon Mr. Jones? My learned friend, if he would have you believe that this dialogue is seditious and dangerous, must be driven to acknowledge that Government has grossly neglected its trust; for if, as he says, it has an evident tendency in critical times to stir up alarming commotions, and to procure a reform in the representation of the people by violence and force of arms; and if, as he likewise says, a public prosecution is a proceeding calculated to prevent these probable consequences, what excuse is he prepared to make for the Government, which, when according to the evidence of his own witness, an application was made to it for that express purpose, positively, and on deliberation, refused to prosecute? What will he say for one learned gentleman,* who dead is lamented, and for another,† who living is honoured by the whole profession, both of whom, on the appearance of this dialogue, were charged with the duty of prosecuting all offenders against the state, yet who not only read it day after day in pamphlets and newspapers, without stirring against the publishers, but who, on receiving it from the Lords of the Treasury by official reference, opposed a prosecution at the national expense? What will he say of the successors of those gentlemen who hold their offices at this hour, and who have ratified the opinions of their predecessors by their own conduct? And what, lastly, will he say in vindication of Majesty itself, to my knowledge not unacquainted with the subject, yet from whence no orders issued to the inferior servants of the state?

So that, after Mr. Fitzmaurice, representing this dialogue as big with ruin to the public, has been laughed at by the King's Ministers

* Mr. Wallace, then Attorney-General.

† Mr. Lee, late Attorney, then Solicitor-General.

at the Treasury, by the King himself, of whom he had an audience, and by those appointed by his wisdom to conduct all prosecutions, you are called upon to believe that it is a libel, dangerous and destructive; and that while the state, neglected by those who are charged with its preservation, is tottering to its centre, the falling constitution of this ancient nation is happily supported by Mr. Jones, who, like another Atlas, bears it upon his shoulders.*

Mr. Jones, then, who sits before you, is the only man in England who accuses the defendant. He alone takes upon himself the important office of dictating to His Majesty, of reprobating the proceedings of his Ministers, and of superseding his Attorney and Solicitor-General; and shall I insult your understandings by supposing that this accusation proceeds from pure patriotism and public spirit in him, *or more properly, in that other gentleman, whose deputy upon this occasion he is well known to be?* Whether such a supposition would not indeed be an insult, his conduct as a public prosecutor will best illustrate.

He originally put the indictment in a regular course of trial in the very neighbourhood where its operations must have been most felt, and where, if criminal in its objects, the criminality must have been the most obvious. A jury of that vicinage was assembled to try it; and the Dean having required my assistance on the occasion, I travelled two hundred miles, with great inconvenience to myself, to do him that justice which he was entitled to as my friend, and to pay to my country that tribute which is due from every man when the LIBERTY OF THE PRESS is invaded.

The jury thus assembled was formed from the first characters in their county—men who would have most willingly condemned either disaffection to the person of the King, or rebellion against his government: yet, when such a jury was empannelled, and such names were found upon it as Sir Watkyn Williams Wynne, and others not less respectable, this *public-spirited prosecutor, who had no other object than public justice*, was confounded and appalled. He said to himself, "This will never do. All these gentlemen know not only that this paper is not in itself a libel, but that it neither was, nor could be, published by the Dean with a libellous intention. What is worse than all, they are men of too proud an honour to act upon any persuasion or authority against the conviction of their own consciences. But how shall I get rid of them? They are already struck and empannelled, and unfortunately neither integrity nor sense are challenges to jurors."

Gentlemen, in this dilemma he produced an affidavit, which appeared to me not very sufficient for the purpose of evading the

* Mr. Jones, the present Marshal of the King's Bench, became entangled in the prosecution as the attorney of Mr. Fitzmaurice, brother to the late Marquis of Lansdowne. He is esteemed a very worthy man, and has since lived in habits of intimacy and regard with Lord Erskine.

trial; but as those who upon that occasion had to decide that question upon their oaths were of a different opinion, I shall not support my own by any arguments, meaning to conduct myself with the utmost reverence for the administration of justice. I shall therefore content myself with stating that the affidavit contained no other matter than that there had been published at Wrexham an extract from Dr Towers's Biography, containing accounts of trials for libels published above a century ago, from which the jurors (if it had fallen in their way, which was not even deposed to) might have been informed of their right to judge their fellow-citizens for crimes affecting their liberties or their lives—a doctrine not often disputed, and never without the vindication of it, by the greatest and most illustrious names in the law. But, says this *public-spirited* prosecutor, IF THE JURY are to try this, I must withdraw my prosecution, for they are men of honour and sense; they know the constitution of their country, and they know the Dean of St. Asaph; and I have therefore nothing left but to apply to the judges, suggesting that the minds of the special jury are so prejudiced by being told that they are Englishmen, and that they have the power of acquitting a defendant accused of a crime, if they think him innocent, that they are unfit to sit in judgment upon him. Gentlemen, the scheme succeeded, and I was put in my chaise and wheeled back again, with the matter in my pocket which had postponed the trial,—matter which was to be found in every shop in London, and which had been equally within the reach of every man who had sat upon a jury since the times of King Charles II.

In this manner, above a year ago, the prosecutor deprived my reverend friend of an honourable acquittal in his own country. It is a circumstance material in the consideration of this indictment, because, in administering public justice, you will, I am persuaded, watch with jealousy to discover whether public justice be the end and object of the prosecution: and in trying whether my reverend client proceeded *malo animo* in the publication of this dialogue, you will certainly obtain some light from examining *quo animo* the prosecutor has arraigned him before you.

When the indictment was brought down again to trial at the next following assizes, there were no more pamphlets to form a pretext for procrastination. I was surprised, indeed, that they did not employ some of their own party to publish one, and have recourse to the same device which had been so successful before; but this mode either did not strike, or was thought to be but fruitlessly delaying that acquittal, which could not be ultimately prevented.

The prosecutor, therefore, secretly sued out a writ of *certiorari* from the Court of King's Bench, the effect of which was to remove the indictment from the Court of Great Sessions in Wales, and to bring it to trial as an English record in an English county. Armed

with this secret weapon to defeat the honest and open arm of justice, he appeared at Wrexham, and gave notice of trial, saying to himself, "I will take no notice that I have the King's writ, till I see the complexion of the jury; if I find them men fit for my purpose, either as the prostitutes of power, or as men of little minds, or from their insignificance equally subject to the frown of authority and the blandishments of corruption, so that I may reasonably look for a sacrifice, instead of a trial, I will then keep the *certiorari* in my pocket, and the proceedings will, of course, go forward; but if, on the contrary, I find such names as I found before—if the gentlemen of the county are to meet me—I will then, with His Majesty's writ in my hand, discharge them from giving that verdict of acquittal which their understandings would dictate and their consciences impose."

Such, without any figure, I may assert to have been the secret language of Mr Jones to himself, unless he means to slander those gentlemen in the face of this Court, by saying that the jurors, from whose jurisdiction he, by his *certiorari*, withdrew the indictment, were not impartial, intelligent, and independent men; a sentiment which he dares not presume even to whisper, because in public or in private he would be silenced by all who heard it.

From such a tribunal this public-spirited prosecutor shrunk a second time; and just as I was getting out of my chaise at Wrexham; after another journey from the other side of the island without even notice of an intention to postpone the trial, he himself in person (his counsel having, from a sense of honour and decency, refused it) presented the King's writ to the Chief-Justice of Chester, which dismissed the Dean for ever from the judgment of his neighbours and countrymen, and which brings him before you to-day.

What opinion, then, must the prosecutor entertain of your honour and your virtues, since he evidently expects from you a verdict which it is manifest from his conduct he did not venture to hope for from such a jury as I have described to you?

Gentlemen, I observe an honest indignation rising in all your countenances on the subject, which, with the arts of an advocate, I might easily press into the service of my friend; but as his defence does not require the support of your resentments, or even of those honest prejudices to which liberal minds are but too open without excitation, I shall draw a veil over all that may seduce you from the correctest and the severest judgment.

Gentlemen, the Dean of St. Asaph is indicted by the prosecutor, not for having published this little book; that is not the charge: he is indicted for publishing a false, scandalous, and malicious libel; and for publishing it (I am now going to read the very words of the charge) "with a malicious design and intention to diffuse among the subjects of this realm jealousies and suspicions of the King and his government; to create disaffection to his person; to raise

seditions and tumults within the kingdom ; and to excite His Majesty's subjects to attempt, by armed rebellion and violence, to subvert the state and constitution of the nation."

These are not words of *form*, but of the very essence of the charge. The defendant pleads that he is not guilty, and puts himself upon you, his country ; and it is fit, therefore, that you should be distinctly informed of the effect of a general verdict of guilty on such an issue, before you venture to pronounce it. By such a verdict you do not merely find that the defendant *published the paper in question* ; for if that were the whole scope of such a finding, involving no examination into the *merits* of the thing published, the term *guilty* might be wholly inapplicable and unjust, because the publication of that which is not criminal cannot be a crime, and because a man cannot be *guilty* of publishing that which contains in it nothing which constitutes guilt. This observation is confirmed by the language of the record ; for if the verdict of guilty involved no other consideration than the simple fact of publication, the legal term would be, *that the defendant PUBLISHED*, not that he *was GUILTY* of publishing : yet they who tell you that a general verdict of guilty comprehends nothing more than the fact of publishing, are forced in the same moment to confess, that if you found *that fact alone*, without applying to it the epithet of *guilty*, no judgment or punishment could follow from your verdict : and they therefore call upon you to pronounce that guilt which they forbid you to examine into, acknowledging at the same time that it can be legally pronounced by NONE BUT YOU : a position shocking to conscience, and insulting to common sense.

Indeed, every part of the record exposes the absurdity of a verdict of *guilty*, which is not founded on a previous judgment that the matter indicted is a libel, and that the defendant published it with a criminal intention ; for if you pronounce the word *guilty*, without meaning to find sedition in the thing published, or in the mind of the publisher, you expose to shame and punishment the innocence which you mean to protect ; since the instant that you say the defendant is *guilty*, the gentleman who sits under the Judge is bound by law to record him *guilty in manner and form as he is accused*,—i.e., guilty of publishing a seditious libel, with a seditious intention,—and the Court above is likewise bound to put the same construction on your finding. Thus, without inquiry into the only circumstance which can constitute *guilt*, and without meaning to find the defendant *guilty*, you may be seduced into a judgment which your consciences may revolt at, and your speech to the world deny ; but which the authors of this system have resolved that you shall not explain to the Court, when it is proceeding to punish the defendant on the authority of your intended verdict of acquittal.

As a proof that this is the plain and simple state of the question, I might venture to ask the learned Judge what answer I should

receive from the Court of King's Bench, if you were this day to find the Dean of St. Asaph guilty, but without meaning to find it a libel, or that he published it with a wicked and seditious purpose; and I, on the foundation of your wishes and opinions, should address myself thus to the Court when he was called up for judgment:—

“My Lords, I hope that, in mitigation of my client's punishment, you will consider that he published it with perfect innocence of intention, believing, on the highest authorities, that everything contained in it was agreeable to the laws and constitution of his country; and that your Lordships will further recollect that the jury, at the trial, gave no contrary opinion, finding only *the fact of publication*.”

Gentlemen, if the patience and forbearance of the Judges permitted me to get to the conclusion of such an absurd speech, I should hear this sort of language from the Court in answer to it: “We are surprised, Mr. Erskine, at everything we have heard from you. You ought to know your profession better, after seven years' practice of it, than to hold such a language to the Court; *you are estopped by the verdict of guilty from saying he did not publish with a seditious intention*; and we cannot listen to the declarations of jurors in contradiction to their recorded judgment.”

Such would be the reception of that defence; and thus you are asked to deliver over the Dean of St. Asaph into the hands of the Judges, humane and liberal indeed, but who could not betray *their* oaths, because you had set them the example by betraying *yours*, and who would therefore be bound to believe him criminal, because *you* had said so on the record, though in violation of your opinions—opinions which, as ministers of the law, they could not act upon—to the existence of which they could not even advert.

The conduct of my friend Mr. Bearcroft, upon this occasion, which was marked with wisdom and discretion, is a farther confirmation of the truth of all these observations: for, if your duty had been confined to the simple question of publication, his address to you would have been nothing more than that he would call his witness to prove *the fact that the Dean published this paper*, instead of enlarging to you, as he has done with great ability, on the libellous nature of the publication. There is, therefore, a gross inconsistency in his address to you, not from want of his usual precision, but because he is hampered by his good sense in stating an absurd argument, which happens to be necessary for his purpose; for he sets out with saying, that if you shall be of opinion it has no tendency to excite sedition, you must find him *not guilty*; and ends with telling you, that whether it *has* or *has not* such tendency, is a question of *law for the Court*, and foreign to the present consideration. It requires, therefore, no other faculty than that of keeping awake, to see through the fallacy of such doctrines;

and I shall therefore proceed to lay before you the observations I have made upon this dialogue, which you are desired to censure as a libel.

I have already observed, and it is indeed on all hands admitted, that if it be libellous at all, it is a libel on the public government, and not the slander of any private man.

Now, to constitute a libel upon the government, one of two things appears to me to be absolutely necessary. The publication must either arraign and misrepresent the general principles on which the constitution is founded, with a design to render the people turbulent and discontented under it: or, admitting the good principles of the government in the abstract, must accuse the existing administration with a departure from them, in such a manner, too, as to convince a jury of an evil design in the writer.

Let us try this little pamphlet by these touchstones, and let the defendant stand or fall by the test.

The beginning of this pamphlet, and indeed the evident and universal scope of it, is to render our happy constitution, and the principles on which it is founded, well understood by all that part of the community which are out of the pale of that knowledge by liberal studies and scientific reflections; a purpose truly public-spirited, and which could not be better effected than by having recourse to familiar comparisons drawn from common life, more suited to the frame of unlettered minds than abstract observations.

It was this consideration that led Sir William Jones,* a gentleman of great learning and excellent principles, to compose this dialogue, and who immediately after avowing himself to be the author, was appointed by the King to be one of the supreme judges of our Asiatic empire: where he would hardly have been selected to preside if his work had been thought seditious. Of this I am sure, that his intentions were directly the contrary. He thought and felt, as all men of sense must feel and think, that there was no mode so likely to inculcate obedience to government in an Englishman, as to make him acquainted with its principles; since the English constitution must always be cherished and revered exactly in the proportion that it is understood.

He therefore divested his mind of all those classical refinements which so remarkably characterise it, and composed this simple and natural dialogue between a gentleman and a farmer: in which the gentleman, meaning to illustrate the great principles of public government by comparing them with the lesser combinations of society, asks the farmer what is the object of the little club in the village of which he is a member; and if he is a member of it on compulsion, or by his free consent?—if the president is self-

* Sir William Jones is now dead, but his name will live for ever in the grateful memory of his country.

appointed, or rules by election?—if he would submit to his taking the money from the box without the vote of the members? with many other questions of a similar tendency; and being answered in the negative, he very luminously brings forward the analogy by making the gentleman say to him, “Did it never occur to you that every state is but a great club?” or in other words, that the greater as well as the lesser societies of mankind are held together by social compacts, and that the government of which you are a subject is not the rod of oppression in the hands of the strongest, but is of your own creation, a voluntary emanation from yourself, and directed to your own advantage.

Mr. Bearcroft, sensible that this is the just and natural construction of that part of the dialogue, was very desirous to make you believe that the other part of it, touching the reform in the representation of the people in Parliament, had no reference to that context; but that it was to be connected with all that follows about bearing arms. I must therefore beg your attention to that part of the publication, which will speak plainly for itself.

The gentleman says to the farmer, on his telling him he had no vote, “Do you know that six men in seven have, like you, no voice in the election of those who make the laws which bind your property and life?” And then asks him to sign a petition which has for its object to render elections co-extensive with the trusts which they repose. And is there a man upon the jury who does not feel that all the other advantages of our constitution are lost to us until this salutary object is attained; or who is not ready to applaud every man who seeks to attain it by means that are constitutional?

But, according to my friend, the means proposed were not constitutional, but rebellious. I will give you his own words, as I took them down: “The gentleman was saying, very intelligibly, Sir, I desire you to rebel—to clothe yourself in armour, for you are cheated of your inheritance. How are you to rectify this? How are you to right yourselves? Learn the Prussian exercise.”

But, how does my friend collect these expressions from the words of the passages, which are shortly these: “And the petition which I desired you to sign has only for its object the restoration of your right to choose your law-makers.” I confess I am at a loss to conceive how the Prussian exercise finds its way into this sentence. It is a most martial way of describing pen and ink. Cannot a man sign a petition without tossing a firelock? I, who have been a soldier, can do either; but I do not sign my name with a gun. There is, besides, another difficulty in my friend’s construction of the sentence. The object of the petition is the choosing of law-makers; but according to him, there is to be an end of all law-makers, and of all laws: for neither can exist under the Prussian exercise. He must be a whimsical scholar who tells a

farmer to sign a petition for the improvement of government, his real purpose being to set it upon the die of a rebellion whether there should be any government at all.

But, let me ask you, gentlemen, whether such strained constructions are to be tolerated in a criminal prosecution, when the simple and natural construction of language falls in directly with the fact? You cannot but know, that at the time when this dialogue was written, the table of the House of Commons groaned with petitions presented to the House from the most illustrious names and characters, representing the most important communities in the nation; not with the threat of the Prussian exercise, but with the prayer of humility and respect to the legislature, that some immediate step should be taken to avert that ruin which the defect in the representation of the people must sooner or later bring upon this falling empire. I do not choose to enter into political discussions here. But we all know that the calamities which have fallen upon this country have proceeded from that fatal source; and every wise man must be therefore sensible that a reform, if it can be attained without confusion, is a most desirable object. But whether it be or be not desirable is an idle speculation; because, at all events, the subject has a right to petition for what he *thinks* beneficial. However visionary, therefore, you may think his petition, you cannot deny it to be constitutional and legal; and I may venture to assert, that this dialogue is the *first abstract speculative writing which has been attacked as a libel since the Revolution*; and from Mr Bearcroft's admission, that the proceeding is not prudent, I may venture to foretell that it will be the last.

If you pursue this part of the dialogue to the conclusion, the false and unjust construction put upon it becomes more palpable. "Give me your pen," said the farmer; "I never wrote my name, ill as it may be written, with greater eagerness." Upon which the gentleman says, "I applaud you, and trust that your example will be followed by millions." What example?—Arms?—Rebellion?—Disaffection? No! but that others might add their names to the petition which he had advised him to sign, until the voice of the whole nation reached Parliament on the subject. This is the plain and obvious construction; and it is not long since that those persons in Parliament with whom my friend associates, and with whom he acts, affected at least to hold the voice of the people of England to be the rule and guide of Parliament; and the gentleman in the dialogue, knowing that the universal voice of the community could not be wisely neglected by the legislature, only expressed his wish that the petitions should not be partial, but universal.

With the expression of this wish everything in the dialogue upon the subject of representation finally closes; and if you will only honour me with your attentions for a few moments longer, I will

show you that the rest of the pamphlet is the most abstract speculation on government to be found in print; and that I was well warranted when I told you, some time ago, that all its doctrines were to be found in the brightest pages of English learning, and in the most sacred volumes of English laws.

The subject of the petition being finished the gentleman says, "Another word before we part. What ought to be the consequence if THE KING ALONE were to insist on making laws, or on altering them at his will and pleasure?" To which the farmer answers, "He, too, must be expelled." "Oh, but think of his standing army," says the gentleman, "and of the militia, which now are his in substance though ours in form." Farmer, "If he were to employ that force against the nation, they would and ought to resist him, or the state would cease to be a state." And now you will see that I am not countenancing rebellion; for if this were pointed to excite resistance to the King's authority, and to lead the people to believe that His Majesty was, in the present course of his government, breaking through the laws, and therefore, on the principles of the constitution, was subject to expulsion, I admit that my client ought to be expelled from this and every other community. But is this proved? No! It is not even asserted. I say this in the hearing of a Judge deeply learned in the laws, and who is bound to tell you that there is nothing in the indictment which even charges such an application of the general doctrine. The gentleman who drew it is also very learned in his profession; and if he had intended such a charge, he would have followed the rules delivered by the twelve judges in the House of Lords, in the case of the King against Horne,* and would have set out with saying that, at the time of publishing the libel in question, there were petitions from all parts of England, desiring a reform in the representation of the people in Parliament; and that the defendant, knowing this, and intending to stir up rebellion, and to make the people believe that His Majesty was ruling contrary to law, and ought to be expelled, caused to be published the dialogue. This would have been the introduction to such a charge; and then when he came to the words, "He, too, must be expelled," he would have said, by way of innuendo, *meaning thereby to insinuate that the King was governing contrary to law, and ought to be expelled*; which innuendo, though void in itself, without antecedent matter by way of introduction, would, when coupled with the introductory averment on the record, have made the charge complete. I should have then known what I had to defend my client against, and should have been prepared with witnesses to show you the absurdity of supposing that the Dean ever imagined, or meant to insinuate, that the present King was governing contrary to law. But the penner of the indictment, well knowing

* See Mr. H. Cowper's Reports.

that you never could have found such an application, and that, if it had been averred as the true meaning of the dialogue, the indictment must have fallen to the ground for want of such finding, prudently omitted the innuendo: yet you are desired by Mr. Bearcroft to take that to be the true construction which the prosecutor durst not venture to submit to you by an averment in the indictment, and which, not being averred, is not at all before you.

But if you attend to what follows, you will observe that the writing is *purely speculative*, comprehending *all* the modes by which a government may be dissolved; for it is followed with the speculative case of injury to a government from bad ministers, and its constitutional remedy. Says the gentleman, "What if the great accountants and great lawyers of the nation were to abuse their trust, and cruelly injure, instead of faithfully serving, the public; what in such case are you to do?" Farmer, "We must request the King to remove them, and make trial of others, but none should implicitly be trusted." Request *the King* to remove them! Why, according to Mr. Bearcroft, you had expelled *him* the moment before.

Then follows a third speculation of a government dissolved by an aristocracy, the King remaining faithful to his trust; for the gentleman proceeds thus: "But what if a few great lords or wealthy men were to keep the King himself in subjection, yet exert his force, lavish his treasure, and misuse his name, so as to domineer over the people and manage the Parliament?" Says the farmer, "We must fight for the King and for ourselves." What! for the fugitive King whom the Dean of St. Asaph had before expelled from the crown of these Kingdoms? Here, again, the ridicule of Mr. Bearcroft's construction stares you in the face; but taking it as an abstract speculation of the ruin of a state by aristocracy, it is perfectly plain. When he first puts the possible case of regal tyranny, he states the remedy of expulsion; when of bad ministers to a good king, the remedy of petition to the throne; and when he supposes the throne to be overpowered by aristocratic dominion, he then says, "We must fight for the King and for ourselves." If there had been but one speculation, viz., of regal tyranny, there might have been plausibility at least in Mr. Bearcroft's argument; but when so many different propositions are put, altogether repugnant to and inconsistent with each other, common sense tells every man that the writer is speculative, since no state of facts can suit them all.

Gentlemen, these observations, striking as they are, must lose much of their force, unless you carry along with you the writing from which they arise; and therefore I am persuaded that you will be permitted to-day to do what juries have been directed by courts to do on the most solemn occasions, that is, to take the supposed libel with you out of Court, and to judge for yourselves whether

it be possible for any conscientious or reasonable man to fasten upon it any other interpretation than that which I have laid before you.

If the dialogue is pursued a little further it will be seen that all the exhortations to arms are pointed to the protection of the King's government, and the liberty of the people derived from it. Says the gentleman, "You talk of fighting as if you were speaking of some rustic engagement; but your quarter-staff would avail you little against bayonets." Farmer, "We might easily provide ourselves with better arms." "Not so easily," says the gentleman; "you ought to have a strong firelock." What to do? Look at the context,—for God's sake, do not violate all the rules of grammar by refusing to look at the next antecedent!—take care to have a firelock. For what purpose? "To fight for the King and yourself," in case the King, who is the fountain of legal government, should be kept in subjection by those great and wealthy lords, who might abuse his authority and insult his title. This, I assert, is not only the genuine and natural construction, but the only legal one it can receive from the Court on this record; since in order to charge all this to be not merely speculative and abstract, but pointing to the King and his government, to the expulsion of our gracious Sovereign, whom my reverend friend respects and loves, and whose government he reverences as much as any man who hears me, there should have been such an introduction as I have already adverted to, viz., that there was such views and intentions in *others*, and that *he, knowing it, and intending to improve and foment them, wrote so and so*; and then on coming to the words, *that the King must be expelled*, the sense and application should have been pointed by an averment, *that he thereby meant to insinuate to the people of England that the present King ought in fact to be expelled*; and not speculatively, that under such circumstances it would be lawful to expel a King.

Gentlemen, if I am well founded in thus asserting that neither in law nor in fact is there any seditious application of those general principles, there is nothing further left for consideration than to see whether they be warranted in the abstract; a discussion hardly necessary under the government of his present Majesty, who holds his crown under the Act of Settlement, made in consequence of the compact between the King and people at the Revolution. What part you or I, gentlemen, might have taken if we had lived in the days of the Stuarts, and in the unhappiest of their days which brought on the Revolution, is foreign to the present question; whether we should have been found among those glorious names who from well-directed principle supported that memorable era, or amongst those who from mistaken principle opposed it, cannot affect our judgments to-day: whatever part we may conceive we should or ought to have acted, we are bound by the acts of our

ancestors, who determined that there existed an original compact between King and people, who declared that King James had broken it, and who bestowed the crown upon another. The principle of that memorable Revolution is fully explained in the Bill of Rights, and forms the most unanswerable vindication of this little book. The misdeeds of King James are drawn up in the preamble to that famous statute; and it is worth your attention that one of the principal charges in the catalogue of his offences is, that he caused several of those subjects (whose right to carry arms is to-day denied by this indictment) to be disarmed in defiance of the laws. Our ancestors having stated all the crimes for which they took the crown from the head of their fugitive sovereign, and having placed it on the brows of their deliverer, mark out the conditions on which he is to wear it. They were not to be betrayed by his great qualities, nor even by the gratitude they owed him, to give him an unconditional inheritance in the throne; but enumerating all their ancient privileges, they tell their new sovereign in the body of the law that while he maintains these privileges, and no longer than he maintains them, *he is King*.

The same wise caution which marked the acts of the Revolution is visible in the Act of Settlement on the accession of the House of Hanover, by which the crown was again bestowed upon the strict condition of governing according to law, maintaining the Protestant religion, and not being married to a Papist.

Under this wholesome entail, *which again vindicates every sentence in this book*, may His Majesty and his posterity hold the crown of these kingdoms for ever!—a wish in which I know I am fervently seconded by my reverend friend, and with which I might call the whole country to vouch for the conformity of his conduct.

But my learned friend, knowing that I was invulnerable here, and afraid to encounter those principles on which his own personal liberty is founded, and on the assertion of which his well-earned character is at stake in the world, says to you with his usual artifice:—"Let us admit that there is no sedition in this dialogue, let us suppose it to be all constitutional and legal, *yet it may do mischief; why tell the people so?*"

Gentlemen, I am furnished with an answer to this objection, which I hope will satisfy my friend, and put an end to all disputes among us; for upon this head I will give you the opinion of Mr. Locke, the greatest Whig that ever lived in this country, and likewise of Lord Bolingbroke, the greatest Tory in it; by which you see that Whigs and Tories, who could never accord in anything else, were perfectly agreed upon the propriety and virtue of enlightening the people on the subject of government.

Mr. Locke on this subject speaks out much stronger than the

dialogue. He says in his "Treatise on Government":—"Wherever law ends tyranny begins; and whoever in authority exceeds the power given him by the law, and makes use of the force he has under his command to compass that upon the subject which the law allows not, ceases in that to be a magistrate, and, acting without authority, may be opposed as any other man who by force invades the rights of another. This is acknowledged in subordinate magistrates. He that hath authority by a legal warrant to seize my person *in the street*, may be opposed as a thief and a robber if he endeavours to break *into my house* to execute it on me there, although I know he has such a warrant as would have empowered him to arrest me abroad. And why this should not hold in the highest as well as in the most inferior magistrate I would gladly be informed. For the exceeding the bounds of authority is no more a right in a great than in a petty officer, *in a king than in a constable*; but is so much the worse in him that he has more trust put in him, and more extended evil follows from the abuse of it."

But Mr. Locke, knowing that the most excellent doctrines are often perverted by wicked men, who have their own private objects to lead them to that perversion, or by ignorant men who do not understand them, takes the very objection of my learned friend, Mr. Bearcroft, and puts it as follows into the mouth of his adversary, in order that he may himself answer and expose it:—"But there are who say that it lays a foundation for rebellion." Gentlemen, you will do me the honour to attend to this, for one would imagine Mr. Bearcroft had Mr. Locke in his hand when he was speaking.

"But there are who say that it lays a foundation for rebellion to tell the people that they are absolved from obedience when illegal attempts are made upon their liberties, and that they may oppose their magistrates when they invade their properties contrary to the trust put in them; and that, therefore, the doctrine is not to be allowed as libellous, dangerous, and destructive of the peace of the world." But that great man instantly answers the objection, which he had himself raised in order to destroy it, and truly says, "Such men might as well say that the people should not be told that honest men may oppose robbers or pirates, lest it should excite to disorder and bloodshed."

What reasoning can be more just?—for if we were to argue from the possibility that human depravity and folly may turn to evil what is meant for good, all the comforts and blessings which God, the author of indulgent nature, has bestowed upon us, and without which we should neither enjoy, nor indeed deserve, our existence, would be abolished as pernicious, till we were reduced to the fellowship of beasts.

The Holy Gospels could not be promulgated; for though they

are the foundation of all the moral obligations which unite men together in society, yet the study of them often conducts weak minds to false opinions, enthusiasm, and madness.

The use of pistols should be forbidden; for though they are necessary instruments of self-defence, yet men often turn them revengefully upon one another in private quarrels. Fire ought to be prohibited; for though, under due regulations, it is not only a luxury but a necessary of life, yet the dwellings of mankind and whole cities are often laid waste and destroyed by it. Medicines and drugs should not be sold promiscuously; for though, in the hands of skilful physicians, they are the kind restoratives of nature, yet they may come to be administered by quacks, and operate as poisons. There is nothing, in short, however excellent, which wickedness or folly may not pervert from its intended purpose. But if I tell a man that if he takes my medicine in the agony of disease it will expel it by the violence of its operation, will it induce him to destroy his constitution by taking it while he is in health? Just so when a writer speculates on all the ways by which human governments may be dissolved, and points out the remedies which the history of the world furnishes from the experience of former ages; is he, therefore, to be supposed to prognosticate instant dissolution in the existing government, and to stir up sedition and rebellion against it?

Having given you the sentiments of Mr Locke, published three years after the accession of King William, who caressed the author, and raised him to the highest trust in the state, let us look at the sentiments of a Tory on that subject, not less celebrated in the republic of letters, and on the theatre of the world: I speak of the great Lord Bolingbroke, who was in arms to restore King James to his forfeited throne, and who was anxious to rescue the Jacobites from what he thought a scandal on them, namely, the imputation that, because from the union of so many human rights centred in the person of King James, they preferred and supported his hereditary title on the footing of our own ancient civil constitutions, they therefore believed in his claim to govern *jure divino*, independent of the law.

This doctrine of passive obedience, which the prosecutor of this libel must successfully maintain to be the law, and which certainly is the law, if this dialogue be a libel, was resented above half a century ago by this great writer even in a tract written while an exile in France on account of his treason against the House of Hanover. "The duty of the people," says his Lordship, "is now settled upon so clear a foundation, that no man can hesitate how far he is to obey, or doubt upon what occasions he is to resist. Conscience can no longer battle with the understanding; we know that we are to defend the Crown with our lives and fortunes, as long as the Crown protects us, and keeps strictly to the bounds

within which the laws have confined it. We know, likewise, that we are to do it no longer."

Having finished three volumes of masterly and eloquent discussions on our government, he concludes with stating the duty imposed on every enlightened mind to instruct the people on the principles of our government, in the following animated passage:—"The whole tendency of these discourses is to inculcate a rational idea of the nature of our free government into the minds of all my countrymen, and to prevent the fatal consequence of those slavish principles which are industriously propagated through the kingdom by wicked and designing men. He who labours to blind the people, and to keep them from instruction on those momentous subjects, may be justly suspected of sedition and disaffection; but he who makes it his business to open the understandings of mankind, by laying before them the true principles of their government, cuts up all faction by the roots; for it cannot but interest the people in the preservation of their constitution when they know its excellence and its wisdom."

But, says Mr Bearcroft, again and again, "Are the multitude to be told all this?" I say as often on my part, Yes. I say, that nothing can preserve the government of this free and happy country, in which, under the blessing of God, we live,—that nothing can make it endure to all future ages but its excellence and its wisdom being known, not only to you and the higher ranks of men, who may be overborne by a contentious multitude, but also to the great body of the people, by disseminating among them the true principles on which it is established; which show them that they are not the hewers of wood and the drawers of water to men who avail themselves of their labour and industry; but that government is a *trust* proceeding from *themselves*; an emanation from their own strength; a benefit and a blessing, which has stood the test of ages,—that they are governed because they desire to be governed, and yield a voluntary obedience to the laws, because the laws protect them in the liberties they enjoy.

Upon these principles I assert, with men of all denominations and parties who have written on the subject of free governments, that this dialogue, so far from misrepresenting or endangering the constitution of England, disseminates obedience and affection to it as far as it reaches; and that the comparison of the great political institutions with the little club in the village, is a decisive mark of the honest intention of its author.

Does a man rebel against the president of his club while he fulfils his trust? No! because he is of his own appointment, and acting for his comfort and benefit. This safe and simple analogy, lying within the reach of every understanding, is therefore adopted by the scholar as the vehicle of instruction; who, wishing the peasant to be sensible of the happy government of this country, and

to be acquainted with the deep stake he has in its preservation, truly tells him that a nation is but a great club, governed by the same consent, and supported by the same voluntary compact; impressing upon his mind the great theory of public freedom by the most familiar allusions to the little but delightful intercourses of social life, by which men derive those benefits that come home the nearest to their bosoms.

Such is the wise and innocent scope of this dialogue, which, after it had been repeatedly published without censure, and without mischief, under the public eye of Government in the capital, is gravely supposed to have been circulated by my reverend friend many months afterwards, with a malignant purpose to overturn the monarchy by an armed rebellion.

Gentlemen, if the absurdity of such a conclusion, from the scope of the dialogue itself, were not self-evident, I might render it more glaring by adverting to the condition of the publisher. The affectionate son of a reverend prelate,* not more celebrated for his genius and learning than for his warm attachment to the constitution, and in the direct road to the highest honours and emoluments of that very Church which, when the monarchy falls, must be buried in its ruins: nay, the publisher a dignitary of the same Church himself at an early period of his life, and connected in friendship with those who have the dearest stakes in the preservation of the government, and who, if it continues, may raise him to all the ambitions of his profession. I cannot therefore forbear from wishing that somebody, in the happy moments of fancy, would be so obliging as to invent a reason, in compassion to our dulness, why my reverend friend should aim at the destruction of the present establishment; since you cannot but see, that the moment he succeeded, down comes his father's mitre, which leans upon the crown; away goes his own deanery, with all the rest of his livings; and neither you nor I have heard any evidence to enable us to guess what he is looking for in their room. In the face, nevertheless, of all these absurdities, and without a colour of evidence from his character or conduct in any part of his life, he is accused of sedition, and under the false pretence of public justice, dragged out of his own country, deprived of that trial by his neighbours, which is the right of the meanest man who hears me, and arraigned before you, who are strangers to those public virtues which would in themselves be an answer to this malevolent accusation. But when I mark your sensibility and justice in the anxious attention you are bestowing, when I reflect upon your characters, and observe from the pannel (though I am personally unknown to you) that you are men of rank in this county, I know how these circumstances of injustice will operate: I freely forgive the prosecutor for having fled from his original tribunal.

* Dr. Shipley, then Bishop of St. Asaph.

Gentlemen, I come now to a point very material for your consideration; on which even my learned friend and I, who are brought here for the express purpose of disagreeing in everything, can avow no difference of opinion; on which judges of old and of modern times, and lawyers of all interests and parties, have ever agreed; namely, that even if this innocent paper were admitted to be a libel, the publication would not be criminal, if you, the jury, saw reason to believe that it was not published by the Dean with a criminal intention. It is true, that if a paper containing seditious and libellous matter be published, the publisher is *prima facie* guilty of sedition, the bad intention being a legal inference from the act of publishing: but it is equally true that he may rebut that inference, by showing that he published it innocently.

This was declared by Lord Mansfield, in the case of the King and Woodfall: where his Lordship said, that the fact of publication would in that instance have constituted guilt, if the paper was a libel; because the defendant had given no evidence to the jury to repel the legal inference of guilt, as arising from the publication; but he said at the same time, in the words that I shall read to you, that such legal inference was to be repelled by proof.

"There may be cases where the fact of the publication even of a libel may be justified or excused as lawful or innocent; for no fact which is not criminal, even though the paper be a libel, can amount to a publication of which a defendant ought to be found guilty."

I read these words from Burrow's Reports, published under the eye of the Court, and they open to me a decisive defence of the Dean of St. Asaph upon the present occasion, and give you an evident jurisdiction to acquit him, even if the law upon libels were as it is laid down to you by Mr. Bearcroft: for if I show you that the publication arose from motives that were innocent, and not seditious, he is not a criminal publisher, even if the dialogue were a libel, and, according even to Lord Mansfield, ought not to be found guilty.

The Dean of St. Asaph was one of a great many respectable gentlemen, who, impressed with the dangers impending over the public credit of the nation, exhausted by a long war, and oppressed with grievous taxes, formed themselves into a committee, according to the example of other counties, to petition the Legislature to observe great caution in the expenditure of the public money. This dialogue, written by Sir William Jones, a near relation of the Dean by marriage, was either sent or found its way to him in the course of public circulation. He knew the character of the author; he had no reason to suspect him of sedition or disaffection; and believed it to be, what I at this hour believe, and have represented it to you, a plain, easy manner of showing the people the great interest they had in petitioning Parliament for reforms beneficial

to the public. It was accordingly the opinion of the Flintshire Committee, and not particularly of the Dean as an individual, that the dialogue should be translated into Welsh and published. It was accordingly delivered, at the desire of the committee, to a Mr. Jones, for the purpose of translation. This gentleman, who will be called as a witness, told the Dean a few days afterwards that there were persons, not indeed from their real sentiments, but from spleen and opposition, who represented it as likely to do mischief, from ignorance and misconception, if translated and circulated in Wales.

Now, what would have been the language of the defendant upon this communication if his purpose had been that which is charged upon him by the indictment? He would have said, "If what you tell me is well founded, *hasten the publication*; I am sure I shall never raise discontent here by the dissemination of such a pamphlet in English: therefore let it be instantly translated, if the ignorant inhabitants of the mountains are likely to collect from it that it is time to take up arms."

But Mr. Jones will tell you that, on the contrary, the instant he suggested that such an idea, absurd and unfounded as he felt it, had presented itself, from any motives, to the mind of any man, the Dean, impressed as he was with its innocence and its safety, instantly acquiesced; he recalled, even on his own authority, the intended publication by the committee; and it never was translated into the Welsh tongue at all.

Here the Dean's connection with this dialogue would have ended, if Mr Fitzmaurice, who never lost any occasion of defaming and misrepresenting him, had not thought fit, near three months after the idea of translation was abandoned, to reprobate and condemn the Dean's conduct at the public meetings of the county in the severest terms for his former intention of circulating the dialogue in Welsh, declaring that its doctrines were *seditions, treasonable, and repugnant to the principles of our government*.

It was upon this occasion that the Dean, naturally anxious to redeem his character from the unjust aspersions of having intended to undermine the constitution of his country, conscious that the epithets applied to the dialogue were false and unfounded, and thinking that the production of it would be the most decisive refutation of the groundless calumny cast upon him, directed a few English copies of it to be published in vindication of his former opinions and intentions, prefixing an advertisement to it, which plainly marks the spirit in which he published it. For he there complains of the injurious misrepresentations I have adverted to, and impressed with the sincerest conviction of the innocence, or rather the merit, of the dialogue, makes his appeal to the friends of the Revolution in his justification.

[*Mr. Erskine here read the advertisement to the jury, as prefixed to the dialogue.*]

Now, gentlemen, if you shall believe upon the evidence of the witness to these facts, and of the advertisement prefixed to the publication itself (which is artfully kept back, and forms no part of the indictment), that the Dean, upon the authority of Sir William Jones, who wrote it, of the other great writers on the principles of our government, and of the history of the country itself, really thought the dialogue innocent and meritorious, and that his single purpose in publishing the English copies, after the Welsh edition had been abandoned, was the vindication of his character from the imputation of sedition,—then he is not guilty upon this indictment, which charges the publication with a wicked intent to excite disaffection to the king, and rebellion against his government.

Actus non facit reum nisi mens sit rea is the great maxim of penal justice, and stands at the top of the criminal page in every volume of our humane and sensible laws. The hostile *mind* is the crime which it is your duty to decipher; a duty which I am sure you will discharge with the charity of Christians; refusing to adopt a harsh and cruel construction, when one that is fair and honourable is more reconcilable, not only with all probabilities, but with the evidence which you are sworn to make the foundation of your verdict. The prosecutor rests on the single act of publication, without the advertisement, and without being able to cast an imputation upon the defendant's conduct, or even an observation to assign a motive to give verisimilitude to the charge.

Gentlemen, after the length of time which, very contrary to my inclination, I have detained you, I am sure you will be happy to hear that there is but one other point to which my duty obliges me to direct your attention. I should, perhaps, have said nothing more concerning the particular province of a jury upon this occasion than the little I touched upon it at the beginning, if my friend Mr Bearcroft had not compelled me to it by drawing a line around you, saying (I hope with the same effect that King Canute said to the sea), "Thus far shalt thou go." But since he has thought proper to coop you in, it is my business to let you out; and to give the greater weight to what I am about to say to you. I have no objection that everything which I may utter shall be considered as proceeding from my own private opinions; and that not only my professional character, but my more valuable reputation as a man, may stand or fall by the principles which I shall lay down for the regulation of your judgments.

This is certainly a bold thing to say, since what I am about to deliver may clash in some degree (*though certainly it will not throughout*) with the decision of a great and reverend Judge, who has administered the justice of this country for above half a

century with singular advantage to the public, and distinguished reputation to himself; but whose extraordinary faculties and general integrity, which I should be lost to all sensibility and justice if I did not acknowledge with reverence and affection, could not protect him from severe animadversion when he appeared as the supporter of those doctrines which I am about to controvert. I shall certainly never join in the calumny that followed them, because I believe he acted upon that, as upon all other occasions, with the strictest integrity; an admission which it is my duty to make, which I render with great satisfaction, and which proves nothing more than that the greatest of men are fallible in their judgments, and warns us to judge from the essences of things, and not from the authority of names, however imposing.

Gentlemen, the opinion I allude to is, that *libel or not libel* is a question of *law* for the Judge, *your* jurisdiction being confined to the *fact of publication*. And if this were all that was meant by the position (though I could never admit it to be consonant with reason or law), it would not affect me in the present instance, since all that it would amount to would be that the Judge, and not you, would deliver the only opinion which can be delivered from that quarter upon this subject. But what I am afraid of upon this occasion is, that *neither of you are to give it*; for so my friend has expressly put it. "My Lord," says he, "will probably not give you his opinion whether it be a libel or not, because, as he will tell you, it is a question open upon the record, and that if Mr. Erskine thinks the publication innocent, he may move to arrest the judgment." Now this is the most artful and the most mortal stab that can be given to justice, and to my innocent client. All I wish for is, that the judgment of the Court should be a guide to yours in determining whether this pamphlet be or be not a libel; because, knowing the scope of the learned Judge's understanding and professional ability, I have a moral certainty that his opinion would be favourable. If therefore libel or no libel be a question of law, as is asserted by Mr. Bearcroft, I call for his Lordship's judgment upon that question, according to the regular course of all trials where the law and the fact are blended; in all which cases the notorious office of the Judge is to instruct the consciences of the jury to draw a correct legal conclusion from the facts in evidence before them. A jury are no more bound to return a special verdict in cases of libel than upon other trials, criminal and civil, where law is mixed with fact; they are to find generally upon both, receiving, as they constantly do in every court at Westminster, the opinion of the Judge both on the evidence and the law.

Say the contrary who will, I assert this to be the genuine unrepealed constitution of England; and therefore, if the learned Judge shall tell you that this pamphlet is in the abstract a libel,

though I shall not agree that you are therefore *bound* to find the defendant guilty unless you think so likewise, yet I admit his opinion ought to have very great weight with you, and that you should not rashly, nor without great consideration, go against it. But, if *you* are only to find the *fact of publishing*, which is not even disputed, and the Judge is to tell you that the matter of libel being on the record, *he shall shut himself up in silence, and give no opinion at all as to the libellous and seditious tendency of the paper, and yet shall nevertheless expect you to affix the epithet of GUILTY to the publication of a thing the GUILT of which YOU are forbid, and HE refuses to examine*, miserable indeed is the condition into which we are fallen! Since if you, following such directions, bring in a verdict of guilty, without finding the publication to be a libel, or the publisher seditious, and I afterwards, in mitigation of punishment, shall apply to that humanity and mercy which is never deaf when it can be addressed consistently with the law, I shall be told in the language I before put in the mouths of the judges, "You are estopped, sir, by the verdict; we cannot hear you say your client was mistaken but NOT GUILTY, for had *that* been the opinion of the jury, they had a jurisdiction to acquit him."

Such is the way in which the liberties of Englishmen are by this new doctrine to be shuffled about, from jury to court, without having any solid foundation to rest on. I call this the effect of *new doctrines*, because I do not find them supported by that current of ancient precedents which constitutes English law. The history of seditious libels is perhaps one of the most interesting subjects which can agitate a court of justice; and my friend thought it prudent to touch but very slightly upon it.

We all know that by the immemorial usage of this country, no man in a criminal case could ever be compelled to plead a special plea; for although our ancestors settled an accurate boundary between law and fact, obliging the party defendant who could not deny the latter to show his justification to the Court; yet a man accused of a crime had always a right to throw himself by a general plea upon the justice of his peers; and on such general issue, his evidence to the jury might ever be as broad and general as if he had pleaded a special justification. The reason of this distinction is obvious. The rights of property depend upon various intricate rules, which require much learning to adjust, and much precision to give them stability; but CRIMES consist wholly in intention; and of that which passes in the breast of an Englishman as the motives of his actions, none but an English jury shall judge. It is therefore impossible, in most criminal cases, to separate law from fact; and, consequently, whether a writing be or be not a libel, *never can be an abstract legal question for judges*. And this position is proved by the immemorial practice of courts, the forms of which

are founded upon legal reasoning ; for that very libel, over which it seems you are not to entertain any jurisdiction, is always read, and often delivered to you out of court for your consideration.

The administration of criminal justice in the hands of the people is the basis of all freedom. While that remains, there can be no tyranny, because the people will not execute tyrannical laws on themselves. Whenever it is lost, liberty must fall along with it, because the sword of justice falls into the hands of men who, however independent, have no common interest with the mass of the people. Our whole history is therefore chequered with the struggles of our ancestors to maintain this important privilege, which in cases of libel has been too often a shameful and disgraceful subject of controversy.

The ancient government of this country not being founded, like the modern, upon public consent and opinion, but supported by ancient superstitions and the lash of power, saw the seeds of its destruction in a free press. Printing, therefore, upon the revival of letters, when the lights of philosophy led to the detection of pre-scriptive usurpations, was considered as a matter of state, and subjected to the control of licensers appointed by the Crown ; and although our ancestors had stipulated by Magna Charta that no freeman should be judged but by his peers, the courts of Star-Chamber and High Commission, consisting of privy counsellors erected during pleasure, opposed themselves to that freedom of conscience and civil opinion which *even then* were laying the foundations of the Revolution. Whoever wrote on the principles of government was pilloried in the Star-Chamber ; and whoever exposed the errors of a false religion was persecuted in the Commission Court. But no power can supersede the privileges of men in society, when once the lights of learning and science have arisen amongst them. The prerogatives which former princes exercised with safety, and even with popularity, were not to be tolerated in the days of the First Charles ; and our ancestors insisted that these arbitrary tribunals should be abolished. Why did they insist upon their abolition ? Was it that the question of libel, which was their principal jurisdiction, should be determined only by the judges at Westminster ? In the present times, even such a reform, though very defective, might be consistent with reason, because the judges are now honourable, independent, and sagacious men ; but in those days, they were often wretches—libels upon all judicature ; and instead of admiring the wisdom of our ancestors, if that had been their policy, I should have held them up as lunatics, to the scoff of posterity ; since, in the times when these unconstitutional tribunals were supplanted, the courts of Westminster Hall were filled with men who were equally the tools of power with those in the Star-Chamber ; and the whole policy of the change consisted in that principle which was then never disputed, viz., that the judges

at Westminster, in criminal cases, were but a part of the Court, and could only administer justice through the medium of a jury.

When the people, by the aid of an upright Parliament, had thus succeeded in reviving the constitutional trial by the country, the next course taken by the Ministers of the Crown was to pollute what they could not destroy. Sheriffs devoted to power were appointed, and corrupt juries packed to sacrifice the rights of their fellow-citizens under the mask of a popular trial. This was practised by Charles II., and was made one of the charges against King James, for which he was expelled the kingdom.

When juries could not be found to their minds, judges were daring enough to browbeat the jurors, and to dictate to them what they called the law; and in Charles II.'s time, an attempt was made which, if it had proved successful, would have been decisive. In the year 1670, Penn and Mead, two Quakers, being indicted for *seditionously* preaching to a multitude *tumultuously* assembled in Gracechurch Street, were tried before the Recorder of London, who told the jury that they had nothing to do but to find whether the defendants had preached or not; for that, whether the matter or the intention of their preaching were seditious, were questions of law, and not of fact, which they were to keep to at their peril. The jury, after some debate, found Penn guilty of speaking to people in Gracechurch Street; and on the Recorder's telling them that they meant, no doubt, that he was speaking to a *tumult* of people there, he was informed by the foreman that they allowed of no such words in their finding, but adhered to their former verdict. The Recorder refused to receive it, and desired them to withdraw, on which they again retired, and brought in a general verdict of acquittal, which the Court, considering as a contempt, set a fine of forty marks upon each of them, and condemned them to lie in prison till it was paid. Edward Bushel, one of the jurors (to whom we are almost as much indebted as to Mr Hampden, who brought the case of ship-money before the Court of Exchequer), refused to pay his fine, and being imprisoned in consequence of the refusal, sued out his writ of Habeas Corpus, which, with the cause of his commitment, viz., *his refusing to find according to the direction of the Court in matter of law*, was returned by the Sheriffs of London to the Court of Common Pleas, when Lord Chief-Justice Vaughan, to his immortal honour, delivered his opinion as follows:—"We must take off this veil and colour of words which make a show of being something, but are in fact nothing. If the meaning of these words, *finding against the direction of the Court in matter of law*, be that if the Judge, having heard the evidence given in court (for he knows no other), shall tell the jury upon this evidence that the law is for the Crown, and they, under the pain of fine and imprisonment, are to find accordingly, every man sees that the jury is but a troublesome delay, great charge, and of no use in deter-

mining right and wrong ; and therefore the trials by them may be better abolished than continued, which were a strange and new-found conclusion, after a trial so celebrated for many hundreds of years in this country."

He then applied this sound doctrine with double force to criminal cases, and discharged the upright juror from his illegal commitment.

This determination of the right of juries to find a general verdict was never afterwards questioned by succeeding judges ; not even in the great case of the seven bishops, on which the dispensing power and the personal fate of King James himself in a great measure depended.

These conscientious prelates were, you know, imprisoned in the Tower, and prosecuted by information for having petitioned King James II. to be excused from reading in their churches the declaration of indulgence which he had published contrary to law. The trial was had at the bar of the Court of King's Bench, when the Attorney-General of that day, rather more peremptorily than my learned friend (who is much better qualified for that office, and whom I should be glad to see in it), told the jury *that they had nothing to do but with the bare fact of publication*, and said he should therefore make no answer to the arguments of the bishops' counsel, as to whether the petition was or was not a libel. But Chief-Justice Wright (no friend to the liberty of the subject, and with whom I should be as much ashamed to compare my Lord as Mr. Bearcroft to that Attorney-General) interrupted him, and said, "Yes, Mr. Attorney, I will tell you what they offer, *which it will lie upon you to answer* : they would have you show the jury how this petition has disturbed the Government, or diminished the King's authority." So say I. I would have Mr. Bearcroft show you, gentlemen, how this dialogue has disturbed the King's Government, excited disloyalty and disaffection to his person, and stirred up disorders within these kingdoms.

In the case of the bishops, Mr. Justice Powell followed the Chief-Justice, saying to the jury, "I have given my opinion ; *but the whole matter is before you, gentlemen, and you will judge of it.*" Nor was it withdrawn from their judgment ; for although the majority of the Court were of opinion that it was a libel, and had so publicly declared themselves from the bench, yet, by the unanimous decision of all the judges, after the Court's own opinion had been pronounced by way of charge to the jury, the petition itself, which contained no innuendoes to be filled up as facts, was delivered into their hands, to be carried out of court, for their deliberation. The jury accordingly withdrew from the bar, carrying the libel with them, and (puzzled, I suppose, by the infamous opinion of the judges) were most of the night in deliberation ; all London surrounding the Court with anxious expectation for that verdict

which was to decide whether Englishmen were to be freemen or slaves. Gentlemen, the decision was in favour of freedom, for the reverend fathers were acquitted; and though acquitted in direct opposition to the judgment of the Court, yet it never occurred even to those arbitrary judges, who presided in it, to cast upon them a censure or a frown. This memorable and never to be forgotten trial is a striking monument of the importance of these rights, which no juror should ever surrender; for if the legality of the petition had been referred as a question of law to the Court of King's Bench, the bishops would have been sent back to the Tower, the dispensing power would have acquired new strength, and perhaps the glorious era of the Revolution, and our present happy constitution, might have been lost.

Gentlemen, I ought not to leave the subject of these doctrines which, in the libels of a few years past, were imputed to the noble Earl of whom I formerly spoke, without acknowledging that Lord Mansfield was neither the original composer of them, nor the copier of them from these impure sources. It is my duty to say that Lord Chief-Justice Lee, in the case of the King against Owen, had recently laid down the same opinions before him. But then both of these great judges always conducted themselves on trials of this sort, as the learned Judge will no doubt conduct himself to-day; they considered the jury as open to all the arguments of the defendant's counsel. And in the very case of Owen, who was acquitted against the direction of the Court, the present Lord Camden addressed the jury, not as I am addressing you, but with all the eloquence for which he is so justly celebrated. The *practice*, therefore, of these great judges is a sufficient answer to their *opinions*; for if it be the law of England that the jury may not decide on the question of libel, the same law ought to extend its authority to prevent their being told by counsel that they may.

There is indeed no end of the absurdities which such a doctrine involves; for suppose that this prosecutor, instead of indicting my reverend friend for publishing this dialogue, had indicted him for publishing the Bible, beginning at the first book of Genesis, and ending at the end of the Revelation, without the addition or subtraction of a letter, and without an *innuendo* to point out a libellous application, only putting in at the beginning of the indictment that he published it with a blasphemous intention. On the trial for such a publication, Mr. Bearcroft would gravely say, "Gentlemen of the Jury, you must certainly find by your verdict that the defendant is guilty of this indictment, *i.e.*, guilty of publishing the Bible with the intentions charged by it. To be sure, everybody will laugh when he hears it, and the conviction can do the defendant no possible harm; for the Court of King's Bench will determine that it is not a libel, and he will be discharged from the consequences of the verdict." Gentlemen, I defy the most ingenious

man living to make a distinction between that case and the present ; and in this way you are desired to sport with your oaths by pronouncing my reverend friend to be a criminal, without either determining yourselves, or having a determination, or even an insinuation from the Judge that any crime has been committed ; following strictly that famous and respectable precedent of Rhadamanthus, judge of hell, who punishes first, and afterwards institutes an inquiry into the guilt.

But it seems your verdict would be no punishment, if judgment on it was afterwards arrested. I am sure, if I had thought the Dean so lost to sensibility as to feel it no punishment, he must have found another counsel to defend him. But I know his nature better. Conscious as he is of his own purity, he would leave the court hanging down his head in sorrow, if he were held out by your verdict a seditious subject, and a disturber of the peace of his country. The arrest of judgment which would follow in the term upon his appearance in court as a convicted criminal, would be a cruel insult upon his innocence, rather than a triumph over the unjust prosecutors of his pretended guilt.

Let me, therefore, conclude with reminding you, gentlemen, that if you find the defendant guilty, not believing the thing published to be a libel, or the intention of the publisher seditious, your verdict and your opinions will be at variance ; and it will then be between God and your own consciences to reconcile the contradiction.

SUBJECT of the Trial of the Dean of St. Asaph.

To enable the reader to understand thoroughly the further proceedings in this memorable cause, and more particularly to assist him in appreciating the vast value and importance of the Libel Bill, which it gave rise to, it becomes necessary to refer to Mr. Justice Buller's Charge to the Jury, and what passed in court before the verdict was recorded ; by which it will appear that the rights of juries, as often established by Act of Parliament, had been completely abandoned by all the profession, except by Mr. Erskine. The doctrine insisted and acted upon was, that the jury were confined to the mere act of publishing, and were bound by their oaths to convict of a libel, whatever might be the matter written or published ;—a course of proceeding which placed the British press entirely in the hands of fixed magistrates, appointed by the Crown. This doctrine, we say, was so completely fastened upon the public, that the reader will find in the fifth volume of Sir James Burrow's Reports upon the trial of Woodfall for publishing the Letters of Junius, alluded to by Mr Justice Buller in his Charge to the Jury at Shrewsbury, that an objection to that rule of law, as delivered by Lord Mansfield, was considered to be perfectly frivo-

lous. The next time after that decision when it appears to have been again insisted upon, in the trial of the Rev. Mr. Bate Dudley, for a libel in the *Morning Herald* on the Duke of Richmond, Lord Mansfield told Mr. Erskine, the moment he touched upon it in his speech to the jury, that "it was strange he should be contesting points now, which the greatest lawyers in the court had submitted to for years before he was born." The jury, however, acquitted Mr Dudley notwithstanding, and Mr. Erskine continued to oppose the false doctrine, which was at last so completely exposed and disgraced by the following speeches in this cause, that Mr Fox thought the time at last ripe for the introduction of the Libel Bill, which he moved soon after in the House of Commons, and was seconded by Mr. Erskine. The merits of this most excellent statute, which redeemed, and we trust established for ever, the liberty of the press, and the rights of British juries, will be more easily explained and better understood by perusing the following speeches, which produced at the time a perfect unanimity upon the subject. We have, as a supplement to this volume, printed the Libel Bill itself, and annexed a few observations upon it.

The jury withdrew to consider of their verdict, and in about half an hour returned again into court.

ASSOCIATE. Gentlemen, do you find the defendant guilty or not guilty?

FOREMAN. Guilty of publishing only.

Mr. ERSKINE. You find him guilty of publishing only?

A JUROR. Guilty only of publishing.

Mr. JUSTICE BULLER. I believe that is a verdict not quite correct. You must explain that one way or the other as to the meaning of the innuendoes. The indictment has stated that G means Gentleman, F Farmer; the King the King of Great Britain, and the Parliament the Parliament of Great Britain.

ONE OF THE JURY. We have no doubt of that.

Mr. JUSTICE BULLER. If you find him guilty of publishing, you must not say the word *only*.

Mr. ERSKINE. By that, they mean to find there was no sedition.

A JUROR. We only find him guilty of publishing. We do not find anything else.

Mr. ERSKINE. I beg your Lordship's pardon with great submission. I am sure I mean nothing that is irregular. I understand they say, We only find him guilty of publishing.

A JUROR. Certainly; that is all we do find.

Mr. BRODERICK. They have not found that it is a libel of and concerning the King and his Government.

Mr. JUSTICE BULLER. If you only attend to what is said, there is no question or doubt. If you are satisfied whether the letter G means Gentleman, whether F means Farmer, the King means King of Great Britain, the Parliament the Parliament of Great Britain—if they are all satisfied it is so, is there any other innuendo in the indictment?

Mr. LEYCESTER. Yes ; there is one more upon the word *votes*.

Mr. ERSKINE. When the jury came into court, they gave, in the hearing of every man present, the very verdict that was given in the case of the King against Woodfall ; they said, Guilty of publishing only. Gentlemen, I desire to know whether you mean the word *only* to stand in your verdict ?

ONE OF THE JURY. Certainly.

ANOTHER JUROR. Certainly.

Mr. JUSTICE BULLER. Gentlemen, if you add the word *only*, it will be negating the innuendoes ; it will be negating that by the word King, it means King of Great Britain ; by the word Parliament, Parliament of Great Britain ; by the letter F, it means Farmer, and G Gentleman ; that, I understand, you do not mean.

A JUROR. No.

Mr. ERSKINE. My Lord, I say that will have the effect of a general verdict of guilty. I desire the verdict may be recorded. I desire your Lordship sitting here as Judge to record the verdict as given by the jury. If the jury depart from the word *only*, they alter their verdict.

Mr. JUSTICE BULLER. I will take the verdict as they mean to give it ; it shall not be altered. Gentlemen, if I understand you right, your verdict is this : You mean to say guilty of publishing this libel ?

A JUROR. No ; the pamphlet. We do not decide upon its being a libel.

Mr. JUSTICE BULLER. You say he is guilty of publishing the pamphlet, and that the meaning of the innuendoes is as stated in the indictment.

A JUROR. Certainly.

Mr. ERSKINE. Is the word *only* to stand part of your verdict ?

A JUROR. Certainly.

Mr. ERSKINE. Then I insist it shall be recorded.

Mr. JUSTICE BULLER. Then the verdict must be misunderstood. Let me understand the jury.

Mr. ERSKINE. The jury do understand their verdict.

Mr. JUSTICE BULLER. Sir, I will not be interrupted.

Mr. ERSKINE. I stand here as an advocate for a brother citizen, and I desire that the word *only* may be recorded.

Mr. JUSTICE BULLER. Sit down, sir. Remember your duty, or I shall be obliged to proceed in another manner.

Mr. ERSKINE. Your Lordship may proceed in what manner you think fit. I know my duty as well as your Lordship knows yours. I shall not alter my conduct.

Mr. JUSTICE BULLER. Gentlemen, if you say guilty of publishing only, you negative the meaning of the particular words I have mentioned.

A JUROR. Then we beg to go out.

Mr. JUSTICE BULLER. If you say guilty of publishing only, the consequence is this, that you negative the meaning of the different words I mentioned to you. That is the operation of the word *only*. They are endeavouring to make you give a verdict in words different from what you mean.

A JUROR. We should be very glad to be informed how it will operate.

Mr. JUSTICE BULLER. If you say nothing more but find him guilty of publishing, and leave out the word *only*, the question of law is open upon the record, and they may apply to the Court of King's Bench, and move in arrest of judgment there. If they are not satisfied with the opinion of that Court, either party has a right to go to the House of Lords, if you find nothing more than the simple fact; but if you add the word *only*, you do not find all the facts; you do not find in fact that the letter G means Gentleman, that F means Farmer, the King the King of Great Britain, and Parliament the Parliament of Great Britain.

A JUROR. We admit that.

Mr. JUSTICE BULLER. Then you must leave out the word *only*.

Mr. ERSKINE. I beg pardon. I beg to ask your Lordship this question: Whether, if the jury find him guilty of publishing, leaving out the word *only*, and if the judgment is not arrested by the Court of King's Bench, whether the sedition does not stand recorded?

Mr. JUSTICE BULLER. No, it does not, unless the pamphlet be a libel in point of law.

Mr. ERSKINE. True; but can I say that the defendant did not publish it seditiously, if judgment is not arrested, but entered in the record?

Mr. JUSTICE BULLER. I say it will not stand as proving the sedition. Gentlemen, I tell it you as law, and this is my particular satisfaction, as I told you when summing up the case, if in what I now say to you I am wrong in any instance, they have a right to move for a new trial. The law is this: if you find him guilty of publishing, without saying more, the question whether libel or not is open for the consideration of the Court.

A JUROR. That is what we mean.

Mr. JUSTICE BULLER. If you say guilty of publishing only, it is an incomplete verdict, because of the word *only*.

A JUROR. We certainly mean to leave the matter of libel to the Court.

Mr. ERSKINE. Do you find sedition?

A JUROR. No; not so. We do not give any verdict upon it.

Mr. JUSTICE BULLER. I speak from adjudged cases (I will take the verdict when you understand it yourselves in the words you give it): if you say, Guilty of publishing only, there must be another trial.

A JUROR. We did not say so; only guilty of publishing.

Mr. ERSKINE. Will your Lordship allow it to be recorded thus, Only guilty of publishing?

Mr. JUSTICE BULLER. It is misunderstood.

Mr. ERSKINE. The jury say, Only guilty of publishing. Once more, I desire that that verdict may be recorded.

Mr. JUSTICE BULLER. If you say, Only guilty of publishing, then it is contrary to the innuendoes; if you think the word King means the King of Great Britain, the word Parliament the Parliament of Great Britain, the G means Gentleman, and the F Farmer, you may say *this*, Guilty of publishing; but whether a libel or not, the jury do not find.

A JUROR. Yes.

Mr. ERSKINE. I asked this question of your Lordship in the hearing of the jury, whether, upon the verdict you desire them to find, the sedition which they have not found will not be inferred by the Court if judgment is not arrested?

Mr. JUSTICE BULLER. Will you attend? Do you give it in this way, Guilty of the publication; but whether a libel or not, you do not find?

A JUROR. We do not find it a libel, my Lord: we do not decide upon it.

Mr. ERSKINE. They find it no libel.

Mr. JUSTICE BULLER. You see what is attempted to be done?

Mr. ERSKINE. There is nothing wrong attempted upon my part. I ask this once again, in the hearing of the jury, and I desire an answer from your Lordship as Judge, whether or no, when I come to move in arrest of judgment, and the Court enter up judgment, and say it is a libel, whether I can afterwards say, in mitigation of punishment, the defendant was not guilty of publishing it with a seditious intent, when he is found guilty of publishing it in manner and form as stated; and whether the jury are not thus made to find him guilty of sedition, when in the same moment they say they did not mean to do so. Gentlemen, do you find him guilty of sedition?

A JUROR. We do not, neither one nor the other.

Mr. JUSTICE BULLER. Take the verdict.

ASSOCIATE. You say, Guilty of publishing; but whether a libel or not, you do not find?

A JUROR. That is not the verdict.

Mr. JUSTICE BULLER. You say, Guilty of publishing; but whether a libel or not, you do not find,—is that your meaning?

A JUROR. That is our meaning.

ONE OF THE COUNSEL. Do you leave the intention to the Court?

A JUROR. Certainly.

Mr. COWPER. The intention arises out of the record.

Mr. JUSTICE BULLER. And unless it is clear upon record, there can be no judgment upon it.

Mr. BEARCROFT. You mean to leave the law where it is ?

A JUROR. Certainly.

Mr. JUSTICE BULLER. The first verdict was as clear as could be ; they only wanted it to be confounded.

On the 8th of November, the second day of the ensuing term, Mr. Erskine moved the Court of King's Bench to set aside the verdict, for the misdirection of the Judge in his charge to the jury, and obtained a rule to show cause why there should not be a new trial. There was no shorthand writer in court except a gentleman employed by the editors of the *Morning Herald*, from which paper of the succeeding day the following speech of Mr. Erskine was taken.

MR. ERSKINE'S SPEECH.

[*Delivered in the Court of King's Bench, on Monday the 8th of November 1784, on his Motion for a new trial in Defence of the DEAN of ST. ASAPH.*]

MR. ERSKINE began by stating to the Court the substance of the indictment against the Dean of St. Asaph, which charged the publication with an intention to incite the people to subvert the Government by armed rebellion,—the mere evidence of the publication of the dialogue which the prosecutor had relied on to establish that malicious intention,—and the manner in which the defendant had, by evidence of his real motives for publishing it, as contained in the advertisement, rebutted the truth of the epithets charged by the indictment.

He then stated the substance of his speech to the jury at Shrewsbury, maintaining the legality of the dialogue, the right of the jury to consider that legality, the injustice of a verdict affixing the epithet of *guilty* to a publication without first considering whether the thing published contained any *guilt*; and, above all, the right which the injury unquestionably had (even upon the authority of those very cases urged against his client) to take the evidence into consideration, by which the defendant sought to exculpate himself from the seditious intention charged by the indictment.

He said that the substance of Mr. Jones's evidence was, *that it had been the intention of the Flintshire Committee to translate the dialogue into Welsh*; that it was delivered to him to give to a Mr. Lloyd for that purpose; that *the Dean had just then received it from Sir William Jones*, and had not had time to read it before he delivered it to the witness. Some days after, Mr. Jones wrote to the Dean, telling him that he had collected the opinions of some gentlemen that the translation of it into Welsh might do harm. The Dean's answer (WHO HAD NEVER THEN READ THE THING HIMSELF) was this, "I am very much obliged to you for what you have communicated respecting the pamphlet; I should be exceedingly sorry to publish anything that should tend to sedition." Mr. Erskine contended that this was no admission on the Dean's part that he thought it seditious, for he had never read it; but that his conduct showed that he was not seditiously inclined, since he stopped the publication even in compliance with the affected scruples of men whom he found out, on reading it, to be both

wicked and ignorant; and the translation of it into Welsh was accordingly dropped.

Mr Jones had further said that many persons afterwards, and particularly Mr Fitzmaurice, made very free with the Dean's character for having entertained an idea of translating it into Welsh. It was publicly mentioned at the general meeting of the county, and many opprobrious epithets being fastened on the dialogue itself, the Dean said, "*I am now called upon to show that it is not seditious, and I read it with a rope about my neck.*"

MR. ERSKINE THEN SPOKE AS FOLLOWS VERBATIM.

MY LORD,—Although this is not the place for any commentary on the evidence, I cannot help remarking that this expression was strong proof that the Dean did not think it seditious; for it is absurd to suppose that a man, feeling hurt at the accusation of sedition, should say, I am now called upon to show I am not seditious, and then proceed to read that aloud which he *felt and believed* to contain sedition. The words which follow, "I read it with a rope about my neck," confirm this construction. The obvious sense of which is—I am now called upon to show that this dialogue is not seditious. It has never been read by those who call it so. I will read it in its own vindication, and in mine—"I read it with a rope about my neck,"—that is, if it be treasonable, as is asserted, it is a misdemeanour to read it; but I am so convinced of its innocence, that I read it notwithstanding—*meo periculo*.

The only part of Mr. Jones's evidence which remains is as follows:—I asked him, "Did you collect from what the Dean said that his opinion was that the dialogue was constitutional and legal?" His answer was, "UNDOUBTEDLY. The Dean said, Now I have read this, I do not think it so bad a thing; and I think we ought to publish it, in *vindication of the committee*." The question and answer must be taken in fairness together. The witness was asked if he collected from the Dean that he thought it innocent and constitutional, and the first term in the answer is decisive; that the witness did not merely think it *LESS* criminal than it had been supposed, but *perfectly constitutional*; for he says, "*Undoubtedly I collected that he thought so.*" The Dean said he thought he ought to publish it in vindication of the committee, and it is repugnant to common sense to believe that if the Dean had supposed the dialogue *in any degree* criminal, he would have proposed to publish it himself, in vindication of a former intention of publication by the committee. It would have been a confirmation, not a refutation, of the charge.

The learned Judge after reciting the evidence which I have just been stating (merely as a matter of form, since afterwards it was laid wholly out of the question), began by telling the jury that he

was astonished at a great deal he had heard from the defendant's counsel ; for that he did not know any one question of law more thoroughly settled than the doctrine of libels, as he proposed to state it to them : it then became *my turn* to be astonished. Mr. Justice Buller then proceeded to state, that what had fallen from me, namely, that the jury had a right to consider the libel, *was only the language of a party in this country ; but that the contrary of their notions was so well established, that no man who meant well could doubt concerning it.*

It appeared afterwards that Mr. Lee and myself were members of this party, though my friend was charged with having deserted his colours, as he was the first authority that was cited against me ; and what rendered the authority more curious, the learned Judge mentioned that he had delivered his dictum at Guildhall as counsel for a plaintiff, when these doctrines might have been convenient for the interests of his client, and therefore no evidence of his opinion. This quotation, however, had perhaps more weight with the jury than all that followed, and certainly the novelty of it entitled it to attention.

I hope, however, the sentiments imputed to my friend were not necessary upon that occasion ; if they were, his client was betrayed, for I was myself in the cause alluded to ; and I take upon me to affirm that Mr. Lee *did not, directly or indirectly*, utter any sentiment in the most remote degree resembling that which the learned Judge was pleased to impute to him for the support of his charge. This I shall continue to affirm, notwithstanding the Judge's declaration to the contrary, until I am contradicted by Mr. Lee himself, who is here to answer me if I misrepresent him. [Mr. Lee confirmed Mr. Erskine by remaining silent.]

The learned Judge then said that, as to whether the dialogue, which was the subject of the prosecution, was criminal or innocent, he should not even hint an opinion ; *for that if he should declare it to be no libel, and the jury, adopting that opinion, should acquit the defendant, he should thereby deprive the prosecutor of his right of appeal upon the record, which was one of the dearest birthrights of the subject.* That the law was equal as between the prosecutor and defendant, and that there was no difference between criminal and civil cases. I am desirous not to interrupt the state of the trial by observations, but cannot help remarking that justice to the prosecutor as standing exactly in equal scales with a prisoner, and in the light of an adverse party in a civil suit, was the first reason given by the learned Judge why the jury should at all events find the defendant guilty, without investigating his guilt. This was telling the jury, in the plainest terms, *that they could not find a general verdict in favour of the defendant without an act of injustice to the prosecutor*, who would be shut out by it from his writ of error, which he was entitled to by law, and which was the best

birthright of the subject. It was, therefore, an absolute denial of the right of the jury, and of the Judge also, as no right can exist which necessarily works a wrong in the exercise of it. If the prosecutor had by law a right to have the question on the record, the Judge and jury were both tied up at the trial: the one from directing, and the other from finding, a verdict which disappointed that right.

If the prosecutor had a right to have the question upon the record, for the purpose of appeal, by the jury's confining themselves to the fact of publication, which would leave that question open, it is impossible to say that the jury had a right likewise to judge of the question of libel, and to acquit the defendant, which would deprive the prosecutor of that right. There cannot be contradictory rights, the exercise of one destroying and annihilating the other. I shall discuss this new claim of the prosecutor upon a future occasion; for the present, I will venture to say that no man has a right, a property, or a beneficial interest in the punishment of another. A prosecution at the instance of the Crown has public justice alone, and not private vengeance, for its object; in prosecutions for murder, and felonies, and most other misdemeanours, the prosecutor can have no such pretence, since the record does not comprehend the offence. Why he should have it in the case of a libel, I would gladly be informed.

The learned Judge then stated your Lordship's uniform practice in trying libels, for eight and twenty years,—the acquiescence of parties and their counsel, and the ratification of the principle, by a judgment of the Court in the case of the King against Woodfall. He likewise cited a case which, he said, happened within a year or two of the time of the seven bishops, in which a defendant, indicted for a seditious libel, desired it might be left to the jury whether the paper was seditious; but that the Court said the jury were to decide upon *the fact*; and that if they found him guilty of the *fact*, the Court would afterwards decide the question of libel. The learned Judge then cited the maxim, *ad quæstionem facti respondent juratores, ad quæstionem juris respondent judices*, and said that maxim had been confirmed in the sense he put on it in the very case of Bushel, on which I had relied so much for the contrary position.

The learned Judge, after honouring some of my arguments with answers, and saying again, in stronger terms than before, that there was no difference between the province of the jury in civil and criminal cases, notwithstanding the universality of the general issue instead of special pleadings, told the jury *that if they believed that G meant Gentleman, and F meant Farmer, the matter for their consideration was reduced to the simple fact of publication.*

The Court will please to recollect that the advertisements explaining the Dean's sentiments concerning the pamphlet, and his

motives for the publication of it in English, after it had been given up in Welsh, had been read in evidence to the jury; that Mr Jones had been likewise examined to the same effect, to induce the jury to believe the advertisement to have been prefixed to it *bonâ fide*, and to have spoken the genuine sentiments and motives of the publisher; and that several gentlemen of the first character in the Dean's neighbourhood, in Wales, had been called to speak to his general peaceable deportment, in order to strengthen that proof, and to resist the assent of the jury to the principal averment in the information, viz., *that the defendant published, intending to excite a revolution in the Government, by armed rebellion*. Whether all this evidence, given for the defendant, was adequate to its purpose, is foreign to the present inquiry. I think it was. *But my objection is, that no part of it was left to the consideration of the jury, who were the judges of it*. As to the advertisement, which was part of the pamphlet itself, the learned Judge never even named it, but as part of the prosecutor's proof of the publication, though I had read it to the jury, and insisted upon it as sufficient proof of the defendant's intention, and had called Mr. Jones to confirm the construction I put upon it.

As to Mr. Jones's testimony, Mr. Justice Buller said, "Whether his evidence will or will not operate in mitigation of punishment, is not a question for me to give an opinion upon." And he further declared that if the jury were satisfied as to the fact of the publication, they were BOUND to find the defendant guilty. As to the evidence of character, it was disposed of in the same manner. Mr. Justice Buller said, "As to the several witnesses who have been called to give Mr. Shipley the character of a quiet and peaceable man, not disposed to stir up sedition, *that cannot govern the present question: for the question you are to decide on is, Whether he be, or be not, guilty of publishing this pamphlet?*"

This charge, therefore, contained an express exclusion of the right of the jury to consider the evidence offered by the defendant, to rebut the inference of sedition arising from the act of publication.

The learned Judge repeated the same doctrine at the end of his charge, entirely removing from the jury the consideration of the whole of the defendant's evidence, and concluded by telling them, "*That if they were satisfied as to the truth of the innuendoes and the fact of publication, they were BOUND to find the defendant guilty.*" The jury retired to consider of this charge, and brought in a verdict, "Guilty of publishing ONLY." The learned Judge refused to record it, and I am ready to admit that it was an imperfect verdict. He was not bound to receive it; but when he saw the jury had no doubt of the truth of the innuendoes, and that therefore the word ONLY could not apply to a negation of them, he should have asked them whether they believed the defendant's witnesses, and meant to negative the seditious purpose. It was the more his duty to

have asked that question, as several of the jury themselves said that they gave no opinion concerning seditious intention—a declaration decisive in the defendant's favour, who had gone into evidence to rebut the charge of intention, and of which the Judge, who, in the humane theory of the English law, ought to be counsel for the prisoner, should at the least have taken care to obtain an explanation from the jury, by asking them what *their* opinion was, instead of arguing upon the principle of *his own* charge, what it necessarily must be, if the innuendoes were believed—a position which gave the go-by to the difficulties of the jury. Their intention to exclude the seditious purpose was palpable; and under such circumstances, the excellent remark of the great Mr. Justice Foster never should be forgotten: "When the rigour of the law bordereth upon injustice, mercy ought to interpose in the administration. It is not the part of judges to be perpetually hunting after forfeitures, while the heart is free from guilt. They are the ministers of the Crown appointed for the ends of public justice, and ought to have written upon their hearts the obligation which His Majesty is under, to cause law and justice in mercy to be executed in all his judgments." This solemn obligation is no doubt written upon the hearts of all the judges; but it is unfortunate when it happens to be written in so illegible a hand that a jury cannot possibly read it.

To every part of the learned Judge's directions I have objections which appear to me to be weighty. I will state them distinctly and in their order as shortly or as much at large as the Court shall require of me.

The first proposition which I mean to maintain as a foundation for a new trial is this:

That when a bill of indictment is found or an information filed, charging any crime or misdemeanour known to the law of England, and the party accused puts himself upon the country by pleading the general issue, Not guilty, the jury are **GENERALLY** charged with his deliverance from that **CRIME**, and not **SPECIALLY** from the fact or facts in the commission of which the indictment or information charges the crime to consist, much less from any single fact to the exclusion of others charged upon the same record.

Secondly, I mean to maintain that no act, which the law in its general theory holds to be criminal, constitutes in itself a crime abstracted from the mischievous intention of the actor; and that the intention, even where it becomes a simple inference of reason from a fact or facts established, may, and ought to be, collected by the jury with the Judge's assistance; because the act charged, though established as a fact in a trial on the general issue, does not necessarily and unavoidably establish the criminal intention by any **ABSTRACT** conclusion of law; the establishment of the fact being still no more than *evidence* of the crime, but not the **CRIME**

ITSELF, unless the jury render it so themselves by referring it voluntarily to the Court by special verdict.

I wish to explain this proposition.

When a jury can discover no other reasonable foundation for judging of the intention than the inference from the act charged, and doubting what that inference ought to be in law, refer it to the Court by special verdict, the intention becomes by that inference a question of law; but it only becomes so by this voluntary declaration of the jury, that they mean the party accused shall stand or fall by the abstract legal conclusion from the act charged, not being able to decipher his purpose by any other medium.

But this discretionary reference to the Court upon particular occasions, which may render it wise and expedient, does not abridge or contract the power or the duty of a jury, under other circumstances, to withhold their consent from the intention being taken as a legal consequence of the act; even when they have had no evidence capable of being stated on the face of a special verdict, they may still find a general verdict, founded on their judgment of the crime, and the intention of the party accused of it.

When I say that the jury *MAY* consider the crime and the intention, I desire to be understood to mean, not merely that they have the *POWER* to do it without control or punishment, and without the possibility of their acquittal being disannulled by any other authority (for that no man can deny); but I mean that they have a constitutional legal *RIGHT* to do so,—a right, in many cases, proper to be exercised, and intended by the wise founders of the English government to be a protection to the lives and liberties of Englishmen against the encroachments and perversions of authority in the hands of fixed magistrates.

The establishment of both or either of these two propositions must entitle me to a new trial; for if the jury, on the general issue, had a strictly legal jurisdiction to judge of the libellous nature or seditious tendency of the paper (taking that nature or tendency to be law or fact), then the Judge's direction is evidently unwarrantable. If he had said, As libel or no libel requires a legal apprehension of the subject, it is my duty to give you my opinion; and had then said, I think it is a libel, and had left the jury to find it one under his directions, or otherwise, at their discretion, and had at the same time told them that the criminal intention was an inference from the publication of the libel which it was their duty to make,—or if, admitting their right in *general*, he had advised a special verdict in the *particular instance*, I should have stood in a very different situation; but he told the jury (I take the general result of his whole charge) that they had no jurisdiction to consider of the libel or of the intention, both being beyond the compass of their oath.

Mr. Bearcroft's position was very different. He addressed the

jury with the honest candour of a judge without departing from the proper zeal of an advocate. He said to the jury—I cannot honour him more than by repeating his words; they will long be remembered by those who respect *him* and love the constitution:—

“There is no law in this country,” said Mr. Bearcroft (thank God, there is not; for it would not be a free constitution if there were), “that prevents a jury, if they choose it, from finding a general verdict; I admit it; I rejoice in it; I admire and reverence the principle as the palladium of the constitution. But does it follow, because a jury *may* do this, that they *must* do it—that they OUGHT to do it?” He then took notice of the case of the seven bishops, and honoured the jury for exercising this right on that occasion.

Mr. Bearcroft’s position is therefore manly and intelligible. It is simply this: It is the excellence of the English constitution that you may exert this power when you think the season warrants the exercise of it. The case of the seven bishops was such a season; this is not.

But Mr. Justice Buller did by no means ratify this doctrine. It is surely not too much to expect that the Judge, who is supposed to be counsel for the prisoner, should keep within the bounds of the counsel for the Crown, when a Crown prosecution is in such hands as Mr. Bearcroft’s. The learned Judge, however, told the jury from his own authority, and supported it with much history and observation, and many quotations, that they had nothing to do at all with those questions, their jurisdiction over which Mr. Bearcroft had rejoiced in as the palladium of the constitution. He did not tell them this by way of advice, as applied to the particular case before them; he did not (admitting their right) advise them to forbear the exercise of it in the *particular instance*. No! the learned Judge fastened a UNIVERSAL ABSTRACT limitation on the province of the jury to judge of the crime, or the criminal purpose of the defendant. His whole speech laid down this limitation UNIVERSALLY, and was so understood by the jury; he told them these questions were beyond the compass of their oaths, which was confined to the decision of the fact; and he drove them from the law by the terrors of conscience. The conclusion is short.

If the jury have no jurisdiction, by the law of England, to examine the question of libel, and the criminality or innocence of the intention of the publisher, then the Judge’s charge was right; but if they have jurisdiction, and if their having it be the palladium of the Government, it must be wrong. For how, in common sense, can that power in a jury be called the palladium of the constitution which can never be exerted but by a breach of those rules of law which the same constitution has established for their government?

If in no case a jury can entertain such a question without stepping beyond their duty, it is an affront to human reason to say

that the safety of the Government depends on men's violating their oaths in the administration of justice. If the jury have that right, there is no difference between restricting the exercise of it by the terrors of imprisonment, or the terrors of conscience. If there be any difference, the second is the most dangerous; an upright juryman, like Bushel, would despise the first, but his very honesty would render him the dupe of the last.

The two former propositions on which my motion is founded applying to all criminal cases, and a distinction having always been taken between libels and other crimes by those who support the doctrines I am combating, I mean therefore to maintain that an indictment for a libel, even where the slander of an individual is the object of it (which is capable of being measured by precedents of justice), forms no exception to the jurisdiction or duties of juries, or the practice of judges in other criminal cases,—that the argument for the difference, viz., because the whole crime always appears upon the record, is false in fact, and, even if true, would form no solid or substantial difference in law.

I said that the record does not always contain sufficient for the Court to judge of a libel. The Crown may indict part of a publication, and omit the rest, which would have explained the author's meaning, and rendered it harmless. It has done so here; the advertisement is part of the publication, but no part of the record.

The famous case put by Algernon Sydney is the best illustration that can possibly be put.

Suppose a bookseller, having published the Bible, was indicted in these words, "That intending to promote atheism and irreligion, he had blasphemously printed and published the following false and profane libel—There is no God." The learned Judge said that a person unjustly accused of publishing a libel might always demur to the indictment. This is an instance to the contrary; on the face of such a record, by which the demurrer can alone be determined, it contains a complete criminal charge. The defendant, therefore, would plead not guilty, and go down to trial, when the prosecutor of course could only produce the Bible to support the charge, by which it would appear to be only a verse in the Proverbs of Solomon, viz., "The fool has said in his heart, There is no God," and that the context had been omitted to constitute the libel. The jury, shocked at the imposition, would only wait the judge's direction to acquit; but, consistently with the principles which have governed in the Dean of St. Asaph's trial, how could he be acquitted? The Judge must say, You have nothing to do but with the fact that the defendant published *the words laid in the information*.

But, says the adversary, the distinction is obvious; reading the sacred context to the jury would enable them to negative the innuendoes which are within their province to reject, and which,

being rejected, would destroy the charge. The answer is obvious. Such an indictment would contain no innuendo on which a negative could be put; for if the record charged that the defendant blasphemously published that there was no God, it would require no innuendo to explain it.

Driven from that argument, the adversary must say that the jury by the context would be enabled to negative the epithets contained in the introduction, and could never pronounce it to be blasphemous. But the answer to that is equally conclusive; for it was said, in the case of the King against Woodfall, that these epithets were mere formal inferences of law, from the fact of publishing that which on the record was a libel.

When the defendant was convicted, it could not appear to the Court that the defendant only published the Bible. The Court could not look off the record, which says that the defendant blasphemously published that there was no God. The Judge, maintaining these doctrines, would not, however, forget the respect due to the *religion* of his country, though the law of it had escaped him. He would tell the jury that it should be remembered in mitigation of punishment, and the honest bookseller of Paternoster Row, when he came up in custody to receive judgment, would be let off for a small fine, upon the Judge's report that he had only published a new copy of the Bible; but not till he had been a month in the King's Bench Prison, while this knotty point of divinity was in discussion. This case has stood invulnerable for above one hundred years, and it remains still for Mr. Bearcroft to answer.

I said, in opening this proposition, that even if it were true that the record did contain the whole charge, it would form no substantial difference in law; and I said so, because, if the position be that the Court is always to judge of the law, when it can be made to see it upon the record, no case can occur in which there could be a general verdict, since the law might be always separated from the facts by finding the latter specially, and referring them to the judgment of the Court. By this mode of proceeding, the crime would be equally patent upon the record as by indictment; and if it be patent there, it matters not whether it appears on the front or the back of the parchment; on the first by the indictment, or on the last by the *postea*.

People who seek to maintain this doctrine do not surely see to what length it would go; for if it can be maintained that wherever, as in the case of a libel, the crime appears upon the record, the Court alone, and not the jury, ought to judge, it must follow, that where a writing is laid as an overt act of high treason (which it may be when coupled with publication), the jury might be tied down to find the fact, and the judges of the Crown might make state criminals at their discretion, by finding the law.

The answer in these mild and independent days of judicature is this (Mr Bearcroft, indeed, gave it at the trial): Why may not judges be trusted with our liberties and lives, who determine upon our property and everything that is dear to us?

The observation was plausible for the moment, and suited to his situation, but he is too wise a man to subscribe to it. Where is the analogy between ordinary civil trials between man and man, where judges can rarely have an interest, and great state prosecutions, where power and freedom are weighing against each other, the balance being suspended by the servants of the executive magistrate? If any man can be so lost to reason as to be a sceptic on such a subject, I can furnish him with a cure from an instance directly in point. Let him turn to the 199th page of the celebrated Foster, to the melancholy account of Peachum's indictment for treason for a manuscript sermon found in his closet, never published, reflecting on King James I.'s government. The case was too weak to trust without management even by the sovereign to the judges of those days; it was necessary first to sound them; and the great (but on that occasion the contemptible) Lord Bacon was fixed on for the instrument; and his letter to the King remains recorded in history, where, after telling him his successful practice on the puisne judges, he says that when in some dark manner he has hinted this success to Lord Coke, he will not choose to remain singular.

When it is remembered what comprehensive talents and splendid qualifications Lord Bacon was gifted with, it is no indecency to say that all judges ought to dread a trust which the constitution never gave them, and which human nature has not always enabled the greatest men to fulfil.

If the Court shall grant me a rule, I mean to contend, fourthly, that a seditious libel contains no question of law; but supposing the Court should deny the legality of all these propositions, or admitting their legality, resist the conclusion I have drawn from them, then the last proposition in which I am supported, even by all those authorities on which the learned Judge relies for the doctrines contained in this charge is this:—

PROPOSITION V.

That in all cases where the mischievous intention (which is agreed to be the essence of the crime) cannot be collected by simple inference from the fact charged, because the defendant goes into evidence to rebut such inference, the intention becomes then a pure unmixed question of fact, for the consideration of the jury.

I said the authorities of the King against Woodfall and Almon were with me. In the case of Rex against Woodfall, 5th Burrow, Lord Mansfield expressed himself thus: "Where an act in itself indifferent becomes criminal, when done with a particular intent, there

the intent must be proved and found. But where the act is itself unlawful, as in the case of a libel, the PROOF of justification or excuse lies on the defendant; *and in failure thereof, the law implies a criminal intent.*" Most luminously expressed to convey this sentiment, viz., That when a man publishes a libel, and has nothing to say for himself,—no explanation or exculpation,—a criminal intention need not be proved: it is an inference of common sense, not of law. But the publication of a libel does not exclusively show criminal intent, but is only an implication of law, in failure of the defendant's proof. Lord Mansfield immediately afterwards in the same case explains this further: "There may be cases where the publication may be justified or excused as lawful OR INNOCENT; FOR NO ACT WHICH IS NOT CRIMINAL, *though the paper BE A LIBEL,* can amount to SUCH a publication of which a defendant ought to be found guilty." But no question of that kind arose at the trial (*i.e.*, trial of Woodfall). Why?—Lord Mansfield immediately says why. "*Because* the defendant called no witnesses;" expressly saying that the publication of a libel is not in itself a crime, unless the intent be criminal; and that it is not merely in mitigation of punishment, but that *such* a publication does not warrant a verdict of guilty, if the seditious intention be rebutted by evidence.

In the case of the King against Almon, a magazine containing one of Junius's letters was sold at Almon's shop; there was proof of that sale at the trial. Mr Almon called no witnesses, and was found guilty. To found a motion for a new trial, an affidavit was offered from Mr Almon, that he was not privy to the sale, nor knew that his name was inserted as a publisher, and that this practice of booksellers being inserted as publishers by their correspondents without notice was common in the trade.

Lord Mansfield said, "Sale of a book in a bookseller's shop is *primâ facie* evidence of publication by the master, and the publication of a libel is *primâ facie* evidence of criminal intent: it stands good till answered by the defendant: it must stand till contradicted or explained; *and if not contradicted, explained, or exculpated, BECOMES tantamount to conclusive when the defendant calls no witnesses.*"

Mr Justice Aston said, "*Primâ facie* evidence not answered is sufficient to ground a verdict upon; if the defendant had a sufficient excuse, he might have proved it at the trial: his having neglected it where there was no surprise is no ground for a new one." Mr. Justice Willes and Mr. Justice Ashhurst agreed upon those express principles.

These cases declare the law beyond all controversy to be, that publication, even of a libel, is no *conclusive* proof of guilt, but only *primâ facie* evidence of it till answered; and that if the defendant can show that his intention was not criminal, he completely rebuts the inference arising from the publication, because, though it remains

true that he published, yet it is, according to Lord Mansfield's express words, not such a publication of which a defendant ought to be *found guilty*. Apply Mr. Justice Buller's summing up to this law, and it does not require even a legal apprehension to distinguish the repugnancy.

The advertisement was proved to convince the jury of the Dean's motive for publishing; Mr. Jones's testimony went strongly to aid it; and the evidence to character, though not sufficient in itself, was admissible to be thrown into the scale. But not only no part of this was left to the jury, *but the whole of it was expressly removed from their consideration*; although, in the cases of Woodfall and Almon, it was as expressly laid down to be within their cognisance, and a complete answer to the charge, if satisfactory to the minds of the jurors.

In support of the learned Judge's charge, there can be therefore but two arguments:—either that the defendant's evidence, namely, the advertisement,—Mr. Jones's evidence in confirmation of its having been published *bonâ fide*;—and the evidence to character to strengthen that construction, were not sufficient proof that the Dean believed the publication meritorious, and published it in vindication of his honest intentions;—or else that, even admitting it to establish that fact, it did not amount to such an exculpation as to be evidence on not guilty, so as to warrant a verdict. I give the learned Judge his choice of the alternative.

As to the first, viz., Whether it showed *honest intention* in point of *fact*; that surely was a question for the jury. If the learned Judge had thought it was not sufficient evidence to warrant the jury's believing that the Dean's motives were such as he had declared them, he should have given his opinion of it as a point of evidence, and left it there. I cannot condescend to go further; it would be ridiculous to argue a self-evident proposition.

As to the second, That even if the jury had believed from the evidence that the Dean's intention was wholly innocent, it did not amount to an excuse, and therefore should not have been left to them. Does the learned Judge mean to say, that if the jury had declared, "We find that the Dean published this pamphlet, whether a libel or not we do not find; and we find further, that believing it in his conscience to be meritorious and innocent, he, *bonâ fide*, published it with the prefixed advertisement, as a vindication of his character from the seditious intentions, and not to excite sedition,"—does the Judge mean to say, that on such a special verdict he could have pronounced a criminal judgment? If, on making the report, he says yes, I shall have leave to argue it.

If he says no, then why was the consideration of that evidence, by which those facts might have been found, withdrawn from the jury, even after they had brought in a verdict. Guilty of publishing ONLY, which, in the case of the King against Woodfall, was only said

not to negative the criminal intention, because that defendant had called no witnesses? Why did he confine his inquiries to the innuendoes? and finding the jury agreed upon them, why did he declare them to be bound to affix the epithet of guilty without asking them if they believed the defendant's evidence to rebut the criminal inference? Some of the jury meant to negative the criminal inference, by adding the word *only*, and all would have done it, if they had thought themselves at liberty to enter upon the evidence of the advertisement. *But they were told expressly that they had nothing to do with the consideration of that evidence, which, if believed, would have warranted that verdict.* The conclusion is evident;—if they had a right to consider it, and their consideration might have produced such a verdict, and if such a verdict would have been an acquittal, it must be a misdirection.

It seems to me, therefore, that to support the learned Judge's directions, the very cases relied on in support of them must be abandoned; since, even upon their authority, the criminal intention, though a legal inference from the fact of publishing, in the absence of proof from the defendant, becomes a question of fact, when he offers proof in exculpation to the jury;—the foundation of my motion, therefore, is clear.

I first deny the authority of these modern cases, and rely upon the rights of juries, as established by the ancient law and custom of England, and hold that the Judge's charge confines that right and its exercise, though not the power in the jury to find a general verdict of acquittal.

I assert further, that, whatever were the Judge's intentions, the jury could not but collect that restriction from his charge;—that all free agency was therefore destroyed in them, from respect to authority, in opposition to reason,—and that, therefore, the defendant has had no trial which this Court can possibly sanction by supporting the verdict. But if the Court should be resolved to support its own late determinations, I must content myself even with *their* protection; they are certainly not the shield with which, in a contest for freedom, I should wish to combat, but they are sufficient for my protection: it is impossible to reconcile the learned Judge's directions with any of them.

My Lord, I shall detain the Court no longer at present. The people of England are deeply interested in this great question; and though they are not insensible to that interest, yet they do not feel it in its real extent. The dangerous consequences of the doctrines established on the subject of libel are obscured from the eyes of many, from their not feeling the immediate effects of them in daily oppression and injustice. But that security is temporary and fallacious; it depends upon the convenience of Government for the time being, which may not be interested in the sacrifice of individuals, and in the temper of the magistrate who administers the

criminal law, as the head of this court. I am one of those who could almost lull myself by these reflections from the apprehension of *immediate* mischief, even from the law of libel laid down by your Lordship, if you were always to continue to administer it yourself. I should feel a protection in the gentleness of your character; in the love of justice which its own intrinsic excellence forces upon a mind enlightened by science, and enlarged by liberal education, and in that dignity of disposition which grows with the growth of an illustrious reputation, and becomes a sort of pledge to the public for security: but such a security is as a shadow which passeth away;—you cannot, my Lord, be immortal, and how can you answer for your successor? If you maintain the doctrines which I seek to overturn, you render yourself responsible for all the abuses that may follow from them to our latest posterity.

My Lord, whatever may become of the liberties of England, it shall never be said that they perished without resistance when under my protection.

On this motion the Court granted a rule to show cause why there should not be a new trial—and cause was accordingly shown by the counsel for the Crown on the 15th of November following; their arguments were taken in shorthand by Mr. Blanchard, but were never published. They relied, however, altogether upon the authorities cited by Mr. Justice Buller, in his charge to the jury, and upon the uniform practice of the Court of King's Bench, for more than fifty years. The following speech, in support of the new trial, which was taken at the same time by Mr. Blanchard, was soon after published by Mr. Erskine's authority, in order to attract the attention of the public to the Libel Bill, which Mr. Fox was then preparing for the consideration of Parliament.

ARGUMENT, in the King's Bench, in support of the Rights of Juries.

I AM now to have the honour to address myself to your Lordship in support of the rule granted to me by the Court upon Monday last, which, as Mr Bearcroft has truly said, and seemed to mark the observation with peculiar emphasis, is a rule for a new trial. Much of my argument, according to his notion, points another way; whether its direction be true, or its force adequate to the object, it is now my business to show.

In rising to speak at this time, I feel all the advantage conferred by the reply over those whose arguments are to be answered; but I feel a disadvantage likewise which must suggest itself to every intelligent mind. In following the objections of so many learned persons, offered under different arrangements upon a subject so complicated and comprehensive, there is much danger of being drawn from that method and order, which can alone fasten conviction upon unwilling minds, or drive them from the shelter which ingenuity never fails to find in the labyrinth of a desultory discourse.

The sense of that danger, and my own inability to struggle against it, led me originally to deliver to the Court certain written and maturely considered propositions, from the establishment of which I resolved not to depart, nor to be removed, either in substance or in order, in any stage of the proceedings, and by which I must, therefore, this day unquestionably stand or fall.

Pursuing this system, I am vulnerable two ways, and in two ways only. Either it must be shown that my propositions are not valid in law; or, admitting their validity, that the learned Judge's charge to the jury at Shrewsbury was not repugnant to them: there can be no other possible objections to my application for a new trial. My duty to-day is, therefore, obvious and simple; it is, first, to re-maintain those propositions; and then to show that the charge delivered to the jury at Shrewsbury was founded upon the absolute denial and reprobation of them.

I begin, therefore, by saying again, in my own original words, that when a bill of indictment is found, or an information filed, charging any crime or misdemeanour known to the law of England, and the party accused puts himself upon the country by pleading the general issue, Not guilty, the jury are GENERALLY charged

with his deliverance from that CRIME, and not SPECIALLY from the *fact or facts*, in the commission of which the indictment or information charges the crime to consist; much less from any single fact, to the exclusion of others charged upon the same record.

Secondly, that no act, which the law in its general theory holds to be criminal, constitutes in itself a crime, abstracted from the mischievous intention of the actor. And that the intention, even where it becomes a simple inference of legal reason from a fact or facts established, may and ought to be collected by the jury, with the Judge's assistance. Because the act charged, though established as a fact in a trial *on the general issue*, does not necessarily and unavoidably establish the criminal intention by any ABSTRACT conclusion of law; the establishment of the fact being still no more than full evidence of the crime, but not the crime itself; unless the jury render it so themselves, by referring it voluntarily to the Court by special verdict.

These two propositions, though worded with cautious precision, and in technical language, to prevent the subtlety of legal disputation in opposition to the plain understanding of the world, neither do nor were intended to convey any other sentiment than this, viz, that in all cases where the law either directs or permits a person accused of a crime to throw himself upon a jury for deliverance by pleading *generally* that he is not guilty, the jury, thus legally appealed to, may deliver him from the accusation by a general verdict of acquittal, founded (as in common sense it evidently must be) upon an investigation as general and comprehensive as the charge itself from which it is a general deliverance.

Having said this, I freely confess to the Court that I am much at a loss for any further illustration of my subject; because I cannot find any matter by which it might be further illustrated so clear, or so indisputable, either in fact or in law, as the very proposition itself which upon this trial has been brought into question. Looking back upon the ancient constitution, and examining with painful research the original jurisdictions of the country, I am utterly at a loss to imagine from what sources these novel limitations of the rights of juries are derived. Even the Bar is not yet trained to the discipline of maintaining them. My learned friend Mr. Bearcroft solemnly abjures them; he repeats to-day what he avowed at the trial, and is even jealous of the imputation of having meant less than he expressed; for when speaking this morning of the *right* of the jury to judge of the whole charge, your Lordship corrected his expression by telling him he meant the *power*, and not the *right*; he caught instantly at your words, disavowed your explanation, and, with a consistency which does him honour, declared his adherence to his original admission in its full and obvious extent. "I did not mean," said he, "merely to acknowledge that the jury have the *power*, for their power nobody ever

doubted; and, if a Judge was to tell them they had it not, they would only have to laugh at him, and convince him of his error by finding a general verdict which must be recorded. I meant, therefore, to consider it as a *right*, as an important privilege, and of great value to the constitution."

Thus Mr. Bearcroft and I are perfectly agreed: I never contended for more than he has voluntarily conceded. I have now his express authority for repeating, in my own former words, that the jury have not merely the *power* to acquit, upon a view of the whole charge, without control or punishment, and without the possibility of their acquittal being annulled by any other authority; but that they have a *constitutional, legal right to do it,—a right fit to be exercised*, and intended by the wise founders of the government to be a protection to the lives and liberties of Englishmen against the encroachments and perversions of authority in the hands of fixed magistrates.

But this candid admission on the part of Mr. Bearcroft, though very honourable to himself, is of no importance to me; since, from what has already fallen from your Lordship, I am not to expect a ratification of it from the Court; it is therefore my duty to establish it. I feel all the importance of my subject, and nothing shall lead me to-day to go out of it. I claim all the attention of the Court, and the right to state every authority which applies in my judgment to the argument, without being supposed to introduce them for other purposes than my duty to my client and the constitution of my country warrants and approves.

It is not very usual, in an English Court of Justice, to be driven back to the earliest history and original elements of the constitution, in order to establish the first principles which mark and distinguish English law; they are always assumed, and, like axioms in science, are made the foundations of reasoning without being proved. Of this sort our ancestors, for many centuries, must have conceived the right of an English jury to decide upon every question which the forms of the law submitted to their final decision; since, though they have immemorially exercised that supreme jurisdiction, we find no trace in any of the ancient books of its ever being brought into question. It is but as yesterday, when compared with the age of the law itself, that judges, unwarranted by any former judgments of their predecessors, without any new commission from the Crown, or enlargement of judicial authority from the Legislature, have sought to fasten a limitation upon the rights and privileges of jurors, totally unknown in ancient times, and palpably destructive of the very end and object of their institution.

No fact, my Lord, is of more easy demonstration, for the history and laws of a free country lie open even to vulgar inspection.

During the whole Saxon era, and even long after the establish-

ment of the Norman government, the whole administration of justice, criminal and civil, was in the hands of the people, without the control or intervention of any judicial authority delegated to fixed magistrates by the Crown. The tenants of every manor administered civil justice to one another in the court-baron of their lord; and their crimes were judged of in the leet, every suitor of the manor giving his voice as a juror, and the steward being only the register, and not the judge. On appeals from these domestic jurisdictions to the county court, and to the torn of the sheriff, or in suits and prosecutions originally commenced in either of them, the sheriff's authority extended no further than to summon the jurors, to compel their attendance, ministerially to regulate their proceedings, and to enforce their decisions; and even where he was specially empowered by the King's writ of *justices* to proceed in causes of superior value, no *judicial* authority was thereby conferred upon himself, but only a more enlarged jurisdiction ON THE JURORS who were to try the cause mentioned in the writ.

It is true that the sheriff cannot now intermeddle in pleas of the Crown; but with this exception, which brings no restrictions on juries, these jurisdictions remain untouched at this day; intricacies of property have introduced other forms of proceeding, but the constitution is the same.

This popular judicature was not confined to particular districts, or to inferior suits and misdemeanours, but pervaded the whole legal constitution; for when the Conqueror, to increase the influence of his crown, erected that great superintending Court of Justice in his own palace, to receive appeals criminal and civil from every court in the kingdom, and placed at the head of it the *capitalis justiciarius totius Angliæ*, of whose original authority the Chief Justice of this Court is but a partial and feeble emanation; even that great magistrate was in the *aula regis* merely ministerial; every one of the King's tenants who owed him service in right of a barony had a seat and a voice in that high tribunal, and the office of justiciar was but to record and to enforce their judgments.

In the reign of King Edward I., when this great office was abolished, and the present Courts at Westminster established by a distribution of its powers, the barons preserved that supreme superintending jurisdiction which never belonged to the justiciar, but to themselves only as the jurors in the King's court: a jurisdiction which, when nobility, from being territorial and feudal, became personal and honorary, was assumed and exercised by the peers of England, who, without any delegation of judicial authority from the Crown, form to this day the supreme and final court of English law, judging in the last resort for the whole kingdom, and sitting upon the lives of the peerage, in their ancient and genuine character, as the *pares* of one another.

When the courts at Westminster were established in their present forms, and when the civilisation and commerce of the nation had introduced more intricate questions of justice, the judicial authority in civil cases could not but enlarge its bounds; the rules of property in a cultivated state of society became by degrees beyond the compass of the unlettered multitude; and in certain well-known restrictions undoubtedly fell to the Judges; yet more perhaps from necessity than by consent, as all judicial proceedings were artfully held in the Norman language, to which the people were strangers.

Of these changes in judicature, immemorial custom, and the acquiescence of the legislature, are the evidence, which establish the jurisdiction of the Courts on the true principle of English law, and measure the extent of it by their ancient practice.

But no such evidence is to be found of the least relinquishment or abridgment of popular judicature *in cases of crimes*; on the contrary, every page of our history is filled with the struggles of our ancestors for its preservation. The law of property changes with new objects, and becomes intricate as it extends its dominion; but crimes must ever be of the same easy investigation: they consist wholly in intention; and the more they are multiplied by the policy of those who govern, the more absolutely the public freedom depends upon the people's preserving the entire administration of criminal justice to themselves. In a question of property between two private individuals, the Crown can have no possible interest in preferring the one to the other: but it may have an interest in crushing both of them together, in defiance of every principle of humanity and justice, if they should put themselves forward in a contention for public liberty, against a government seeking to emancipate itself from the dominion of the laws. No man in the least acquainted with the history of nations, or of his own country, can refuse to acknowledge, that if the administration of criminal justice were left in the hands of the Crown or its deputies, no greater freedom could possibly exist than government might choose to tolerate from the convenience or policy of the day.

My Lord, this important truth is no discovery or assertion of mine, but is to be found in every book of the law: whether we go up to the most ancient authorities, or appeal to the writings of men of our own times, we meet with it alike in the most emphatic language. Mr. Justice Blackstone, by no means biassed towards democratical government, having in the third volume of his *Commentaries* explained the excellence of the trial by jury in civil cases, expresses himself thus, vol. iv., p. 349:—"But it holds much stronger in criminal cases; since in times of difficulty and danger, more is to be apprehended from the violence and partiality of Judges appointed by the Crown, in suits between the King and the subject, than in disputes between one individual and another

to settle the boundaries of private property. Our law has, therefore, wisely placed this strong and twofold barrier of a presentment and trial by jury between the liberties of the people and the prerogative of the Crown: without this barrier, justices of *oyer and terminer* named by the Crown might, as in France or in Turkey, imprison, despatch, or exile any man that was obnoxious to government, by an instant declaration that such was their will and pleasure. So that the liberties of England cannot but subsist so long as this palladium remains sacred and inviolate, not only from all open attacks, which none will be so hardy as to make, but also from all secret machinations which may sap and undermine it."

But this remark, though it derives new force in being adopted by so great an authority, was no more original in Mr. Justice Blackstone than in me: the institution and authority of juries is to be found in Bracton, who wrote above five hundred years before him. "The *curia* and the *pares*," says he, "were necessarily the judges in all cases of life, limb, crime, and disherison of the heir in capite. The King could not decide, for then he would have been both prosecutor and judge; neither could his justices, for they represent him."*

Notwithstanding all this, the learned Judge was pleased to say at the trial that there was no difference between civil and criminal cases. I say, on the contrary, independent of these authorities, that there is not, even to vulgar observation, the remotest similitude between them.

There are four capital distinctions between prosecutions for crimes and civil actions, every one of which deserves consideration.

First, In the jurisdiction necessary to found the charge.

Secondly, In the manner of the defendant's pleading to it.

Thirdly, In the authority of the verdict which discharges him.

Fourthly, In the independence and security of the jury from all consequences in giving it.

As to the first, it is unnecessary to remind your Lordships that, in a civil case, the party who conceives himself aggrieved states his complaint to the Court, avails himself at his own pleasure of its process, compels an answer from the defendant by its authority, or taking the charge *pro confesso* against him on his default, is entitled to final judgment and execution for his debt without any interposition of a jury. But in criminal cases it is otherwise; the Court has no cognisance of them, without leave from the people forming a grand inquest. If a man were to commit a capital offence in the face of all the judges of England, their united authority could not put him upon his trial; they could file no complaint against him, even upon the records of the supreme criminal Court, but could only commit him for safe custody, which is equally competent to every common justice of the peace: the

* Vide Mr. Reeves' very ingenious History of the English Law.

grand jury alone could arraign him, and in their discretion might likewise finally discharge him, by throwing out the bill, with the names of all your Lordships as witnesses on the back of it. If it shall be said that this exclusive power of the grand jury does not extend to lesser misdemeanours, which may be prosecuted by information, I answer, that for that very reason it becomes doubly necessary to preserve the power of the other jury which is left. In the rules of pleading there is no distinction between capital and lesser offences; and the defendant's plea of not guilty (which universally prevails as the legal answer to every information or indictment, as opposed to special pleas to the Court in civil actions), and the necessity imposed upon the Crown to join the general issue, are absolutely decisive of the present question.

Every lawyer must admit that the rules of pleading were originally established to mark and to preserve the distinct jurisdictions of the Court and the jury, by a separation of the law from the fact, wherever they were intended to be separated. A person charged with owing a debt, or having committed a trespass, &c. &c., if he could not deny the facts on which the actions were founded, was obliged to submit his justification for matter of law by a special plea to the Court upon the record; to which plea the plaintiff might demur, and submit the legal merits to the judges. By this arrangement no power was ever given to the jury by an issue joined before them, but when a right of decision, as comprehensive as the issue, went along with it: if a defendant in such civil actions pleaded the general issue instead of a special plea, aiming at a general deliverance from the charge, by showing his justification to the jury at the trial, the Court protected its own jurisdiction by refusing all evidence of the facts on which such justification was founded. The extension of the general issue beyond its ancient limits, and in deviation from its true principle, has introduced some confusion into this simple and harmonious system; but the law is substantially the same. No man at this day, in any of those actions where the ancient forms of our jurisprudence are still wisely preserved, can possibly get at the opinion of a jury upon any question not intended by the constitution for their decision. In actions of debt, detinue, breach of covenant, trespass, or replevin, the defendant can only submit the mere fact to the jury; the law must be pleaded to the Court: if, dreading the opinion of judges, he conceals his justification under the cover of a general plea in hopes of a more favourable construction of his defence at the trial, its very existence can never even come within the knowledge of the jurors; every legal defence must arise out of facts, and the authority of the Judge is interposed to prevent their appearing before a tribunal which, in such cases, has no competent jurisdiction over them.

By imposing this necessity of pleading every legal justification to the Court, and by this exclusion of all evidence on the trial

beyond the negation of the fact, the Courts indisputably intended to establish, and did in fact effectually secure, the judicial authority over legal questions from all encroachment or violation; and it is impossible to find a reason in law, or in common sense, why the same boundaries between the fact and the law should not have been at the same time extended to criminal cases by the same rules of pleading, if the jurisdiction of the jury had been designed to be limited to the fact, as in civil actions.

But no such boundary was ever made or attempted; on the contrary, every person, charged with any crime by an indictment or information, has been in all times, from the Norman conquest to this hour, not only permitted, but even bound to throw himself upon his country for deliverance by the general plea of not guilty; and may submit his whole defence to the jury, whether it be a negation of the fact, or a justification of it in law; and the Judge has no authority, as in a civil case, to refuse such evidence at the trial, as out of the issue, and as *coram non judice*; an authority which in common sense he certainly would have, if the jury had no higher jurisdiction in the one case than in the other. The general plea thus sanctioned by immemorial custom so blends the law and the fact together as to be inseparable but by the voluntary act of the jury in finding a special verdict: the general investigation of the whole charge is therefore before them; and although the defendant admits the fact laid in the information or indictment, he nevertheless, under his general plea, gives evidence of others which are collateral, referring them to the judgment of the jury as a legal excuse or justification, and receives from their verdict a complete, general, and conclusive deliverance.

Mr. Justice Blackstone, in the fourth volume of his *Commentaries*, page 339, says, "The traitorous or felonious intent are the points and very gist of the indictment, and must be answered directly by the general negative, not guilty; and the jury will take notice of any defensive matter, and give their verdict accordingly, as effectually as if it were specially pleaded."

This, therefore, says Sir Matthew Hale, in his "*Pleas of the Crown*," page 258, is, upon all accounts, the most advantageous plea for the defendant: "It would be a most unhappy case for the Judge himself, if the prisoner's fate depended upon his directions:—unhappy also for the prisoner; for if the Judge's opinion must rule the verdict, the trial by jury would be useless."

My Lord, the conclusive operation of the verdict when given, and the security of the jury from all consequences in giving it, render the contrast between criminal and civil cases striking and complete. No new trial can be granted, as in a civil action:—your Lordships, however you may disapprove of the acquittal, have no authority to award one; for there is no precedent of any such upon record; and the discretion of the Court is circumscribed by the law.

Neither can the jurors be attainted by the Crown. In Bushel's case, "*Vaughan's Reports*," page 146, that learned and excellent Judge expressed himself thus: "There is no case in all the law of an attain for the King, nor any opinion but that of Thyrning's, 10th of Henry IV., title Attaint, 60 and 64, for which there is no warrant in law, though there be other spacious authority against it, touched by none that have argued this case."

Lord MANSFIELD. To be sure it is so.

Mr. ERSKINE. Since that is clear, my Lord, I shall not trouble the Court further upon it: indeed I have not been able to find any one authority for such an attain but a dictum in "*Fitzherbert's Natura Brevium*," page 107; and on the other hand, the doctrine of Bushel's case is expressly agreed to in very modern times: *vide* "*Lord Raymond's Reports*," 1st volume, page 469.

If, then, your Lordships reflect but for a moment upon this comparative view of criminal and civil cases which I have laid before you; how can it be seriously contended, not merely that there is no difference, but that there is any the remotest similarity between them? In the one case, the power of accusation begins from the Court;—in the other, from the people only; forming a grand jury. In the one, the defendant must plead a special justification, the merits of which can only be decided by the Judges;—in the other, he may throw himself for general deliverance upon his country. In the first, the Court may award a new trial, if the verdict for the defendant be contrary to the evidence or the law;—in the last it is conclusive and unalterable;—and to crown the whole, the King never had that process of attain which belonged to the meanest of his subjects.

When these things are attentively considered, I might ask those who are still disposed to deny the right of the jury to investigate the whole charge, whether such a solecism can be conceived to exist in any human government, much less in the most refined and exalted in the world, as that a power of supreme judicature should be conferred at random by the blind forms of the law, where no right was intended to pass with it; and which was upon no occasion and under no circumstance to be exercised; which, though exerted notwithstanding in every age and in a thousand instances, to the confusion and discomfiture of fixed magistracy, should never be checked by authority, but should continue on from century to century; the revered guardian of liberty and of life, arresting the arm of the most headstrong governments in the worst of times, without any power in the Crown or its Judges, to touch, without its consent, the meanest wretch in the kingdom, or even to ask the reason and principle of the verdict which acquits him. That such a system should prevail in a country like England, without either the original institution or the acquiescing sanction of the legislature, is impossible. Believe me, my Lord, no talents can reconcile,

no authority can sanction, such an absurdity;—the common sense of the world revolts at it.

Having established this important right in the jury beyond all possibility of cavil or controversy, I will now show your Lordship that its existence is not merely consistent with the theory of the law, but is illustrated and confirmed by the universal practice of all judges, not even excepting Mr. Justice Forster himself, whose writings have been cited in support of the contrary opinion. How a man expresses his abstract ideas is but of little importance when an appeal can be made to his plain directions to others, and to his own particular conduct: but even none of his expressions, when properly considered and understood, militate against my position.

In his justly celebrated book on the criminal law, page 256, he expresses himself thus: "The construction which the law putteth upon fact STATED AND AGREED OR FOUND by a jury, *is in all cases undoubtedly the proper province of the Court.*" Now if the adversary is disposed to stop here, though the author never intended he should, as is evident from the rest of the sentence, yet I am willing to stop with him, and to take it as a substantive proposition; for the slightest attention must discover that it is not repugnant to anything which I have said. Facts *stated and agreed*, or facts *found*, by a jury, which amount to the same thing, constitute a special verdict; and who ever supposed that the law upon a special verdict was not the province of the Court? Where in a trial upon a general issue the parties choose to agree upon facts and to state them, or the jury choose voluntarily to find them without drawing the legal conclusion themselves; who ever denied that in such instances the Court is to draw it? That Forster meant nothing more than that the Court was to judge of the law when the jury thus voluntarily prays its assistance by special verdict, is evident from his words which follow, for he immediately goes on to say, in cases of doubt and REAL difficulty, it is therefore commonly recommended to the jury to state facts and circumstances in a special verdict: but neither here, nor in any other part of his works, is it said or insinuated that they are *bound* to do so, but at their own free discretion; indeed, the very term *recommended* admits the contrary, and requires no commentary. I am sure I shall never dispute the wisdom or expediency of such a recommendation in those cases of doubt, because the more I am contending for the existence of such an important right, the less it would become me to be the advocate of rashness and precipitation in the exercise of it. It is no denial of jurisdiction to tell the greatest magistrate upon earth to take good counsel in cases of real doubt and difficulty. Judges upon trials, whose authority to state the law is indisputable, often refer it to be more solemnly argued before the Court; and this Court itself often holds a meeting of the twelve Judges before it decides on a point upon its own records, of which the others have

confessedly no cognisance till it comes before them by the writ of error of one of the parties. These instances are monuments of wisdom, integrity, and discretion, but they do not bear in the remotest degree upon jurisdiction: the sphere of jurisdiction is measured by what may or may not be decided by any given tribunal with legal effect, not by the rectitude or error of the decision. If the jury, according to these authorities, may determine the whole matter by their verdict, and if the verdict when given is not only final and unalterable, but must be enforced by the authority of the Judges, and executed, if resisted, by the whole power of the state,—upon what principle of government or reason can it be argued not to be law? That the jury are in this exact predicament is confessed by Forster; for he concludes with saying, that when the law is clear, the jury, under the direction of the Court, in point of law *may*, and if they are well advised will, *always find a general verdict conformably to such directions.*

This is likewise consistent with my position: if the law be clear, we may presume that the Judge states it clearly to the jury; and if he does, undoubtedly the jury, if they are well advised, will find according to such directions; for they have not a capricious discretion to make law at their pleasure, but are bound in conscience as well as Judges are to find it truly; and, generally speaking, the learning of the Judge who presides at the trial affords them a safe support and direction.

The same practice of Judges in stating the law to the jury, as applied to the particular case before them, appears likewise in the case of the King against Oneby, 2d Lord Raymond, page 1494:—“On the trial the Judge directs the jury thus: If you believe such and such witnesses who have sworn to such and such facts, *the killing of the deceased appears to be with malice prepense*: but if you do not believe them, then you ought to find him guilty of manslaughter; and the jury may, if they think proper, give a general verdict of murder or manslaughter: *but if they decline* giving a general verdict, and *will find the facts specially*, the Court is then to form their judgment from the facts found, whether the defendant be guilty or not guilty, *i.e.*, whether the act was done with malice and deliberation, or not.” Surely language can express nothing more plainly or unequivocally, than that where the general issue is pleaded to an indictment, the law and the fact are both before the jury; and that the former can never be separated from the latter, for the judgment of the Court, unless by their own spontaneous act: for their words are, “If they *decline* giving a general verdict, and *will find the facts specially*, the Court is *THEN* to form their judgment from the facts found.” So that, after a general issue joined, the authority of the Court only commences when the jury chooses to decline the decision of the law by a general verdict; the right of declining which legal determination is a privilege conferred

on them by the statute of Westminster 2d, and by no means a restriction of their powers.

But another very important view of the subject remains behind : for supposing I had failed in establishing that contrast between criminal and civil cases, which is now too clear not only to require, but even to justify another observation, the argument would lose nothing by the failure ; the similarity between criminal and civil cases derives all its application to the argument from the learned Judge's supposition, that the jurisdiction of the jury over the law was never contended for in the latter, and consequently on a principle of equality could not be supported in the former ; whereas I do contend for it, and can incontestably establish it in both. This application of the argument is plain from the words of the charge : " If the jury could find the law, it would undoubtedly hold in civil cases as well as criminal ; but was it ever supposed that a jury was competent to say the operation of a fine, or a recovery, or a warranty, which are mere questions of law ? "

To this question I answer, that the competency of the jury in such cases is contended for to the full extent of my principle, both by Lyttleton and by Coke : they cannot indeed decide upon them *de plano*, which, as Vaughan truly says, is unintelligible, because an unmixed question of law can by no possibility come before them for decision ; but whenever (which very often happens) the operation of a fine, a recovery, a warranty, or any other record or conveyance known to the law of England comes forward, mixed with the fact on the general issue, the jury have then most unquestionably a right to determine it ; and what is more, no other authority possibly can ; because, when the general issue is permitted by law, these questions cannot appear on the record for the judgment of the Court, and although it can grant a new trial, yet the same question must ultimately be determined by another jury. This is not only self-evident to every lawyer, but, as I said, is expressly laid down by Lyttleton in the 368th section. " Also in such cases where the inquest may give their verdict at large, if they will take upon them the knowledge of the law upon the matter, they may give their verdict generally as it is put in their charge : as in the case aforesaid they may well say, that the lessor did not disseise the lessee if they will." Coke, in his commentary on this section, confirms Lyttleton ; saying, that in doubtful cases they should find specially for fear of an attain ; and it is plain that the statute of Westminster the 2nd, was made either to give or to confirm the right of the jury to find the matter specially, leaving their jurisdiction over the law as it stood by the common law. The words of the statute of Westminster 2d, chapter 30th, are, "*Ordinatum est quod justitarii ad assisas capiendas assignati, non compellant juratores dicere precise si sit disseisina vel non ; dummodo voluerint dicere veritatem facti et petere*

auxilium justitiariorum." From these words it should appear, that the jurisdiction of the jury over the law when it came before them on the general issue, was so vested in them by the constitution, that the exercise of it in all cases had been considered to be compulsory upon them, and that this act was a legislative relief from that compulsion in the case of an assize of disseisin: it is equally plain from the remaining words of the act, that their jurisdiction remained as before; "*sed si sponte velint dicere quod disseisina est vel non, admittatur eorum veredictum sub suo periculo.*"

But the most material observation upon this statute, as applicable to the present subject, is, that the terror of the attainder from which it was passed to relieve them, having (as has been shown) no existence in cases of crime, the act only extended to relieve the jury at their discretion from finding the law in civil actions; and consequently it is only from custom, and not from positive law, that they are not *even compellable* to give a general verdict involving a judgment of law on every criminal trial.

These principles and authorities certainly establish that it is the duty of the Judge, on every trial where the general issue is pleaded, to give to the jury his opinion on the law as applied to the case before them; and that they must find a general verdict comprehending a judgment of law, unless they *choose* to refer it specially to the Court.

But we are here, in a case where it is contended, that the duty of the Judge is the direct contrary of this:—that he is to give no opinion at all to the jury upon the law as applied to the case before them; that they likewise are to refrain from all consideration of it, and yet that the very same general verdict comprehending both fact and law, is to be given by them as if the whole legal matter had been summed up by the one and found by the other.

I confess I have no organs to comprehend the principle on which such a practice proceeds. I contended for nothing more at the trial than the very practice recommended by Forster and Lord Raymond: I addressed myself to the jury upon the law with all possible respect and deference, and indeed with very marked personal attention to the learned Judge: so far from urging the jury dogmatically to think for themselves without his constitutional assistance, I called for his opinion on the question of libel; saying, that if he should tell them distinctly the paper indicated was libellous, though I should not admit that, they were bound at all events to give effect to it if they felt it to be innocent; yet I was ready to agree that they ought not to go against the charge without great consideration: but that if he should shut himself up in silence, giving no opinion at all upon the criminality of the paper from which alone any guilt could be fastened on the

publisher, and should narrow their consideration to the publication, I entered my protest against their finding a verdict affixing the epithet of *guilty* to the mere fact of publishing a paper, the *guilt* of which had not been investigated. If, after this address to the jury, the learned Judge had told them, that in his opinion the paper was a libel, but still leaving it to their judgments, and likewise the defendant's evidence to their consideration, had further told them, that he thought it did not exculpate the publication; and if in consequence of such directions the jury had found a verdict for the Crown, I should never have made my present motion for a new trial; because I should have considered such a verdict of Guilty as founded upon the opinion of the jury on the whole matter as left to their consideration, and must have sought my remedy by arrest of judgment on the record.

But the learned Judge took a direct contrary course: he gave no opinion at all on the guilt or innocence of the paper; he took no notice of the defendant's evidence of intention: he told the jury, in the most explicit terms, that neither the one nor the other were within their jurisdiction; and upon the mere fact of publication directed a general verdict comprehending the epithet of *Guilty*, after having expressly withdrawn from the jury every consideration of the merits of the paper published, or the intention of the publisher, from which it is admitted on all hands the *guilt* of publication could alone have any existence.

My motion is therefore founded upon this obvious and simple principle; that the defendant has had in fact NO TRIAL; having been found *guilty* without any investigation of his *guilt*, and without any power left to the jury to take cognisance of his innocence. I undertake to show, that the jury could not possibly conceive or believe from the Judge's charge, that they had any jurisdiction to acquit him; however they might have been impressed even with the merit of the publication, or convinced of his meritorious intention in publishing it: nay, what is worse, while the learned Judge totally deprived them of their whole jurisdiction over the question of libel and the defendant's seditious intention, he at the same time directed a general verdict of Guilty, which comprehended a judgment upon both.

When I put this construction on the learned Judge's direction, I found myself wholly on the language in which it was communicated; and it will be no answer to such construction, that no such restraint was meant to be conveyed by it. If the learned Judge's intentions were even the direct contrary of his expressions, yet if, in consequence of that which was expressed though not intended, the jury were abridged of a jurisdiction which belonged to them by law, and in the exercise of which the defendant had an interest, he is equally a sufferer, and the verdict given under such misconception of authority is equally void; my application ought therefore

to stand or fall by the charge itself, upon which I disclaim all disingenuous cavilling. I am certainly bound to show, that from the general result of it, fairly and liberally interpreted, the jury could not conceive that they had any right to extend their consideration beyond the bare fact of publication, so as to acquit the defendant by a judgment founded on the legality of the dialogue, or the honesty of the intention in publishing it.

In order to understand the learned Judge's direction, it must be recollected that it was addressed to them in answer to me, who had contended for nothing more than that these two considerations ought to rule the verdict; and it will be seen that the charge, on the contrary, not only excluded both of them by general inference, but by expressions, arguments, and illustrations the most studiously selected to convey that exclusion, and to render it binding on the consciences of the jury. After telling them in the very beginning of his charge, that the single question for their decision was, whether the defendant had published the pamphlet? he declared to them, that it was not even *allowed to him, as the Judge trying the cause*, to say whether it was or was not a libel: for that if he should say it was no libel, and they, following his direction, should acquit the defendant, they would thereby deprive the prosecutor of his writ of error upon the record, which was one of his dearest birthrights. The law, he said, was equal between the prosecutor and the defendant; that a verdict of acquittal would close the matter for ever, depriving him of his appeal; and that whatever therefore was upon the record *was not for their decision*, but might be carried at the pleasure of either party to the House of Lords.

Surely language could not convey a limitation upon the right of the jury over the question of libel, or the intention of the publisher, more positive or more universal. It was positive, inasmuch as it held out to them that such a jurisdiction could not be entertained without injustice; and it was universal, because the principle had no special application to the particular circumstances of that trial, but subjected every defendant upon every prosecution for a libel, to an inevitable conviction on the mere proof of publishing *anything*, though both judge and jury might be convinced that the thing published was innocent, and even meritorious.

My Lord, I make this commentary without the hazard of contradiction from any man whose reason is not disordered. For if the prosecutor in every case has a birthright by law to have the question of libel left open upon the record, which it can only be by a verdict of conviction on the single fact of publishing; no legal right can at the same time exist in the jury to shut out that question by a verdict of acquittal, founded upon the merits of the publication, or the innocent mind of the publisher. Rights that are repugnant and contradictory, cannot be co-existent. The jury can never have a constitutional right to do an act beneficial to the

defendant, which, when done, deprives the prosecutor of a right which the same constitution has vested in him. No right can belong to one person, the exercise of which, in *every instance*, must necessarily work a wrong to another. If the prosecutor of a libel has, in *every instance*, the privilege to try the merits of his prosecution before the judges, the jury can have no right in *any instance* to preclude his appeal to them by a general verdict for the defendant.

The jury, therefore, from this part of the charge, must necessarily have felt themselves absolutely limited (I might say even in their powers) to the fact of publication, because the highest restraint upon good men is to convince them that they cannot break loose from it without injustice; and the power of a good subject is never more effectually destroyed than when he is made to believe that the exercise of it will be a breach of his duty to the public, and a violation of the laws of his country.

But since equal justice between the prosecutor and the defendant is the pretence for this abridgment of jurisdiction, let us examine a little how it is affected by it. Do the prosecutor and the defendant really stand upon an equal footing by this mode of proceeding? With what decency this can be alleged, I leave those to answer who know that it is only by the indulgence of Mr. Bearcroft, of counsel for the prosecution, that my reverend client is not at this moment in prison * while we are discussing this notable equality. Besides, my Lord, the judgment of this Court, though not final in the constitution, and therefore not binding on the prosecutor, is absolutely conclusive on the defendant. If your Lordships pronounce the record to contain no libel, and arrest the judgment on the verdict, the prosecutor may carry it to the House of Lords, and, pending his writ of error, remains untouched by your Lordship's decision. But if judgment be against the defendant, it is only at the discretion of the Crown (as it is said), and not of right, that he can prosecute any writ of error at all; and even if he finds no obstruction in that quarter, it is but at the best an appeal for the benefit of public liberty, from which he himself can have no personal benefit; for the writ of error being no supersedeas, the punishment is inflicted on him in the meantime. In the case of Mr. Horne,† this Court imprisoned him for publishing a libel upon its own judgment, pending his appeal from its justice; and he had suffered the utmost rigour which the law imposed upon him as a criminal, at the time that the House of Lords, with the assistance of the twelve judges of England, were gravely assembled

* Lord Mansfield ordered the Dean to be committed on the motion for the new trial, and said he had no discretion to suffer him to be at large, without consent, after his appearance in Court on conviction. Upon which Mr Bearcroft gave his consent that the Dean should remain at large upon bail.

† Afterwards Mr Horne Tooke, whose writings do honour to our language and country.

to determine whether he had been guilty of any crime. I do not mention this case as hard or rigorous on Mr. Horne, as an individual; it is the general course of practice, but surely that practice ought to put an end to this argument of equality between prosecutor and prisoner. It is adding insult to injury to tell an innocent man who is in a dungeon, pending his writ of error, and of whose innocence both judge and jury were convinced at the trial, that he is in equal scales with his prosecutor, who is at large, because he has an opportunity of deciding, after the expiration of his punishment, that the prosecution had been unfounded, and his sufferings unjust. By parity of reasoning, a prisoner in a capital case might be hanged in the meantime for the benefit of equal justice, leaving his executors to fight the battle out with his prosecutor upon the record, through every court in the kingdom, by which, at last, his attainder might be reversed, and the blood of his posterity remain uncorrupted. What justice can be more impartial or equal?

So much for this right of the prosecutor of a libel to *compel* a jury in every case generally to convict a defendant on the fact of publication, or to find a special verdict—a right unheard of before since the birth of the constitution—not even founded upon any equality in fact, even if such a shocking parity could exist in law, and not even contended to exist in any other case where private men become the prosecutors of crimes for the ends of public justice. It can have, generally speaking, no existence in any prosecution for felony, because the general description of the crime in such indictments, for the most part, shuts out the legal question in the particular instance from appearing on the record; and for the same reason, it can have no place even in appeals of death, &c., the only cases where prosecutors appear as the revengers of their own private wrongs, and not as the representatives of the Crown.

The learned Judge proceeded next to establish the same universal limitation upon the power of the jury, from the history of different trials, and the practice of former judges who presided at them; and while I am complaining of what I conceive to be injustice, I must take care not to be unjust myself. I certainly do not, nor ever did, consider the learned Judge's misdirection in his charge to be peculiar to himself; it was only the resistance of the defendant's evidence, and what passed after the jury returned into Court with the verdict, that I ever considered to be a departure from all precedents; the rest had undoubtedly the sanction of several modern cases; and I wish, therefore, to be distinctly understood, that I partly found my motion for a new trial in opposition to these decisions. It is my duty to speak with deference of all the judgments of this Court; and I feel an additional respect for some of those I am about to combat, because they are your Lordship's; but comparing them with the judgments of your predecessors

sors for ages, which is the highest evidence of English law, I must be forgiven if I presume to question their authority.

My Lord, it is necessary that I should take notice of some of them, as they occur in the learned Judge's charge; for although he is not responsible for the rectitude of those precedents which he only cited in support of it, yet the defendant is unquestionably entitled to a new trial, if their principles are not ratified by the Court; for whenever the learned Judge cited precedents to warrant the limitation on the province of the jury imposed by his own authority, it was such an adoption of the doctrines they contained as made them a rule to the jury in their decision.

First then, the learned Judge, to overturn my argument with the jury for their jurisdiction over the whole charge, opposed your Lordship's established practice for eight and twenty years; and the weight of this great authority was increased by the general manner in which it was stated, for I find no expressions of your Lordship's in any of the reported cases which go the length contended for. I find the practice, indeed, fully warranted by them; but I do not meet with the principle which can alone vindicate that practice fairly and distinctly avowed. The learned Judge, therefore, referred to the charge of Chief-Justice Raymond, in the case of the King and Franklin, in which the universal limitation contended for is indeed laid down, not only in the most unequivocal expressions, but the ancient jurisdiction of juries, resting upon all the authorities I have cited, treated as a ridiculous notion which had been just taken up a little before the year 1731, and which no man living had ever dreamed of before. The learned Judge observed that Lord Raymond stated to the jury, on Franklin's trial, that there were three questions: the first was, the fact of publishing the *Craftsman*; secondly, whether the averments in the information were true; but that the third, viz., whether it was a libel, was merely a question of *law*, with which the jury *had nothing to do*, as had been then of late thought by some people who ought to have known better.

This direction of Lord Raymond's was fully ratified and adopted in all its extent, and given to the jury, on the present trial, with several others of the same import, as an unerring guide for their conduct; and surely human ingenuity could not frame a more abstract and universal limitation upon their right to acquit the defendant by a general verdict; for Lord Raymond's expressions amount to an absolute denial of the right of the jury to find the defendant not guilty, if the publication and innuendoes are proved. "Libel or no libel, is a question of law, with which you, the jury, *have nothing to do*." How then can they have any right to give a general verdict consistently with this declaration? Can any man in his senses collect that he has a right to decide on that with which he has nothing to do?

But it is needless to comment on these expressions, for the jury were likewise told by the learned Judge himself, that, if they believed the fact of publication, they were *bound* to find the defendant guilty; and it will hardly be contended, that a man has a right to refrain from doing that which he is bound to do.

Mr. Cowper, as counsel for the prosecution, took upon him to explain what was meant by this expression; and I seek for no other construction: "The learned Judge (said he) did not mean to deny the right of the jury, but only to convey, that there was a religious and moral obligation upon them to refrain from the exercise of it." Now, if the principle which imposed that obligation had been alleged to be *special*, applying only to the *particular case of the Dean of St. Asaph*, and consequently consistent with the right of the jury to a more enlarged jurisdiction in *other* instances; telling the jury that they were bound to convict on proof of publication, might be plausibly construed into a recommendation to refrain from the exercise of their right in *that case*, and not to a *general* denial of its existence: but the moment it is recollected that the principle which bound them was not *particular* to the instance, but abstract and universal, binding alike in *every* prosecution for a libel, it requires no logic to pronounce the expression to be an absolute, unequivocal, and universal denial of the right: common sense tells every man, that to speak of a person's right to do a thing, which yet, in every possible instance where it might be exerted, he is religiously and morally bound not to exert, is not even sophistry, but downright vulgar nonsense. But the jury were not only limited by these modern precedents, which certainly have an existence; but were in my mind limited with still greater effect by the learned Judge's declaration, that some of those ancient authorities on which I had principally relied for the establishment of their jurisdiction, had not merely been overruled, but were altogether inapplicable. I particularly observed how much ground I lost with the jury when they were told from the Bench, that even in Bushel's case, on which I had so greatly depended, the very reverse of my doctrine had been expressly established: the Court having said unanimously in that case, according to the learned Judge's statement, that if the jury be asked what the law is, they cannot say, and having likewise ratified in express terms the maxim, *ad questionem legis non respondent juratores*.

My Lord, this declaration from the Bench, which I confess not a little staggered and surprised me, rendered it my duty to look again into Vaughan, where Bushel's case is reported: I have performed that duty, and now take upon me positively to say, that the words of Lord Chief-Justice Vaughan, which the learned Judge considered as a judgment of the Court, denying the jurisdiction of the jury over the law, *where a general issue is joined before them*, were, on the contrary, made use of by that learned and excellent person,

to expose the fallacy of such a misapplication of the maxim alluded to, by the counsel against Bushel; declaring that it had no reference to any case where the law and the fact were incorporated by the plea of not guilty, and confirming the right of the jury to find the law upon every such issue, in terms the most emphatical and expressive. This is manifest from the whole report.

Bushel, one of the jurors on the trial of Penn and Mead, had been committed by the Court for finding the defendant not guilty, against the direction of the Court in matter of law; and being brought before the Court of Common Pleas by *habeas corpus*, this cause of commitment appeared upon the face of the return to the writ. It was contended by the counsel against Bushel, upon the authority of this maxim, that the commitment was legal, since it appeared by the return that Bushel had taken upon him to find the law against the direction of the Judge, and had been, therefore, legally imprisoned for that contempt. It was upon that occasion that Chief-Justice Vaughan, with the concurrence of the whole Court, repeated the maxim, *ad questionem legis non respondent juratores*, as cited by the counsel for the Crown, but denied the application of it to impose any restraint upon jurors trying any crime upon the general issue. His language is too remarkable to be forgotten, and too plain to be misunderstood. Taking the words of the return to the *habeas corpus*,—viz., “That the jury did acquit against the direction of the Court in matter of law,”—“These words,” said this great lawyer, “taken literally and *de plano*, are insignificant and unintelligible, for no issue can be joined of matter of law;—no jury can be charged with the trial of matter of law barely;—no evidence ever was, or can be, given to a jury of what is law or not; nor any oath given to a jury to try matter of law *alone*; nor can any attaint lie for such a false oath. Therefore we must take off this veil and colour of words, which make a show of being something, but are in fact nothing: for if the meaning of these words, *Finding against the direction of the Court in matter of law*, be, that if the Judge, having heard the evidence given in court (for he knows no other), shall tell the jury upon this evidence that the law is for the plaintiff or the defendant, and they, under the pain of fine and imprisonment, are to find accordingly, every one sees that the jury is but a troublesome delay, great charge, and of no use in determining right and wrong; which were a strange and new-found conclusion, after a trial so celebrated for many hundreds of years in this country.”

Lord Chief-Justice Vaughan’s argument is therefore plainly this. Adverting to the arguments of the counsel, he says, You talk of the maxim *ad questionem legis non respondent juratores*, but it has no sort of application to your subject. The words of your return,—viz., that Bushel did acquit against the direction of the Court in matter of law, are unintelligible, and, as applied to the case, im-

possible. The jury could not be asked in the abstract, what was the law: they could not have an issue of the law joined before them: they could not be sworn to try it. *Ad questionem legis non respondent juratores*: therefore to say literally and *de plano* that the jury found the law against the Judge's direction is absurd: they could not be in a situation to find it;—an unmixed question of law could not be before them:—the Judge could not give any positive directions of law upon the trial, for the law can only arise out of facts, and the Judge cannot know what the facts are till the jury have given their verdict. Therefore, continued the Chief-Justice, let us take off this veil and colour of words, which make a show of being something, but are in fact nothing: let us get rid of the fallacy of applying a maxim, which truly describes the jurisdiction of the Courts over issues of law, to destroy the jurisdiction of jurors, in cases where law and fact are blended together upon a trial:—since, if the jury at the trial are bound to receive the law from the Judge, every one sees that it is a mere mockery, and of no use in determining right and wrong. This is the plain common sense of the argument; and it is impossible to suggest a distinction between its application to *Bushel's case* and to the present, except that the right of imprisoning the jurors was there contended for, in order to enforce obedience to the directions of the Judge. But this distinction, if it deserves the name, though held up by Mr. Bearcroft as very important, is a distinction without a difference. For if, according to Vaughan, the free agency of the jury over the whole charge, uncontrolled by the Judge's direction, constitutes the whole of that ancient mode of trial, it signifies nothing by what means that free agency is destroyed: whether by the imprisonment of conscience or of body: by the operation of their virtues or of their fears. Whether they decline exerting their jurisdiction from being told that the exertion of it is a contempt of religious and moral order, or a contempt of the Court punishable by imprisonment; their jurisdiction is equally taken away.

My Lord, I should be very sorry improperly to waste the time of the Court, but I cannot help repeating once again, that if, in consequence of the learned Judge's directions, the jury, from a just deference to learning and authority, from a nice and modest sense of duty, felt themselves not at liberty to deliver the defendant from the whole indictment, **HE HAS NOT BEEN TRIED**: because, though he was entitled by law to plead generally that he was not guilty; though he did in fact plead it accordingly, and went down to trial upon it, yet the jury have not been permitted to try that issue, but have been directed to find at all events a general verdict of guilty, with a positive injunction not to investigate the guilt, or even to listen to any evidence of innocence.

My Lord, I cannot help contrasting this trial with that of Colonel Gordon's but a few sessions past in London. I had in my hand

but this moment an accurate note of Mr. Baron Eyre's* charge to the jury on that occasion ; I will not detain the Court by looking for it amongst my papers, because I believe I can correctly repeat the substance of it.

EARL OF MANSFIELD. The case of the King v. Cosmo Gordon ?

Mr. ERSKINE. Yes, my Lord : Colonel Gordon was indicted for the murder of General Thomas, whom he had killed in a duel : and the question was, whether, if the jury were satisfied of that fact, the prisoner was to be convicted of murder ? That was, according to Forster, as much a question of law as libel or no libel : but Mr. Baron Eyre did not therefore feel himself at liberty to withdraw it from the jury. After stating (greatly to his honour) the hard condition of the prisoner, who was brought to a trial for life, in a case where the positive law and the prevailing manners of the times were so strongly in opposition to one another, that he was afraid the punishment of individuals would never be able to beat down an offence so sanctioned, he addressed the jury nearly in these words : " Nevertheless, gentlemen, I am bound to declare to you what the law is as applied to this case, in all the different views in which it can be considered by you upon the evidence. *Of this law, and of the facts as you shall find them, your verdict must be compounded ;* and I persuade myself, that it will be such a one as to give satisfaction to your own consciences."

Now, if Mr. Baron Eyre, instead of telling the jury that a duel, however fairly and honourably fought, was a murder by the law of England, and leaving them to find a general verdict under that direction, had said to them, that whether such a duel was murder or manslaughter, was a question with which neither he nor they had anything to do, and on which he should therefore deliver no opinion ; and had directed them to find that the prisoner was guilty of killing the deceased in a deliberate duel, telling them that the Court would settle the rest, that would have been directly consonant to the case of the Dean of St. Asaph. By this direction the prisoner would have been in the hands of the Court, and the judges, not the jury, would have decided upon the life of Colonel Gordon.

But the two learned judges differ most essentially indeed. Mr. Baron Eyre conceives himself bound in duty to state the law as applied to the particular facts, and to leave it to the jury. Mr. Justice Buller says he is not bound, nor even allowed, so to state or apply it, and withdraws it entirely from their consideration. Mr. Baron Eyre tells the jury that their verdict is to be compounded of the fact and the law. Mr. Justice Buller, on the contrary, that it is to be confined to the fact only, the law being the exclusive province of the Court. My Lord, it is not for me to settle differences of opinion between the judges of England, nor to pronounce which

* Late Lord Chief-Baron.

of them is wrong ; but since they are contradictory and inconsistent, I may hazard the assertion that they cannot both be right : the authorities which I have cited, and the general sense of mankind, which settles everything else, must determine the rest.

My Lord, I come now to a very important part of the case, untouched I believe before in any of the arguments on this occasion.

I mean to contend that the learned Judge's charge to the jury cannot be supported even upon its own principles ; for, supposing the Court to be of opinion that all I have said in opposition to these principles is inconclusive, and that the question of libel, and the intention of the publisher, were properly withdrawn from the consideration of the jury, still I think I can make it appear that such a judgment would only render the misdirection more palpable and striking.

I may safely assume that the learned Judge must have meant to direct the jury either to find a general or a special verdict ; or, to speak more generally, that one of these two verdicts must be the object of every charge ; because I venture to affirm, that neither the records of the courts, the reports of their proceedings, nor the writings of lawyers, furnish any account of a third. There can be no middle verdict between both ; the jury must either try the whole issue generally, or find the facts specially, referring the legal conclusion to the Court.

I may affirm with equal certainty, that the general verdict, *ex vi termini*, is universally as comprehensive as the issue, and that consequently such a verdict on an indictment, upon the general issue, not guilty, universally and unavoidably involves a judgment of law as well as fact ; because the charge comprehends both, and the verdict, as has been said, is coextensive with it. Both Coke and Littleton give this precise definition of a general verdict, for they both say that if the jury will find the law, they may do it by a general verdict, which is ever as large as the issue. If this be so, it follows by necessary consequence that if the Judge means to direct the jury to find generally against a defendant, he must leave to their consideration everything which goes to the constitution of such a general verdict, and is therefore bound to permit them to come to, and to direct them how to form that general conclusion from the law and the fact, which is involved in the term guilty. For it is ridiculous to say that guilty is a fact ; it is a conclusion in law from a fact, and therefore can have no place in a special verdict where the legal conclusion is left to the Court.

In this case the defendant is charged, not with having published this pamphlet, but with having published a certain false, scandalous, and seditious libel, with a seditious and rebellious intention. He pleads that he is not guilty in manner and form as he is accused ; which plea is admitted on all hands to be a denial of the whole charge, and consequently does not merely put in issue the fact of

publishing the pamphlet, but the truth of the whole indictment, *i.e.*, the publication of the libel set forth in it, with the intention charged by it.

When this issue comes down for trial, the jury must either find the whole charge or a part of it; and admitting, for argument sake, that the Judge has a right to dictate either of these two courses, he is undoubtedly bound in law to make his direction to the jury conformable to the one or the other. If he means to confine the jury to the fact of publishing, considering the guilt of the defendant to be a legal conclusion for the Court to draw from that fact, specially found on the record, he ought to direct the jury to find that fact without affixing the epithet of guilty to the finding. But if he will have a general verdict of guilty, which involves a judgment of law as well as fact, he must leave the law to the consideration of the jury; since when the word Guilty is pronounced by them, it is so well understood to comprehend everything charged by the indictment, that the associate or his clerk instantly records that the defendant is guilty in manner and form as he is accused, *i.e.*, not simply that he has *published* the pamphlet contained in the indictment, but that he is *guilty of publishing the libel* with the wicked intentions charged on him by the record.

Now, if this effect of a general verdict of guilty is reflected on for a moment, the illegality of directing one upon the bare fact of publishing will appear in the most glaring colours. The learned Judge says to the jury, whether this be a libel is not for your consideration; I can give no opinion on that subject without injustice to the prosecutor; and as to what Mr. Jones swore concerning the defendant's motives for the publication, that is likewise not before you: for if you are satisfied in point of fact that the defendant *published* this pamphlet, you are bound to find him *guilty*. Why guilty, my Lord, when the consideration of guilt is withdrawn? He confines the jury to the finding of a fact, and enjoins them to leave the legal conclusion from it to the Court; yet, instead of directing them to make that fact the subject of a special verdict, he desires them in the same breath to find a general one; to draw the conclusion without any attention to the premises; to pronounce a verdict which, upon the face of the record, includes a judgment upon their oaths that the paper is a libel, and that the publisher's intentions in publishing it were wicked and seditious, although neither the one nor the other made any part of their consideration. My Lord, such a verdict is a monster in law, without precedent in former times, or root in the constitution. If it be true, on the principle of the charge itself, that the fact of publication was all that the jury were to find, and all that was necessary to establish the defendant's guilt, if the thing published be a libel, why was not that fact found like all other facts upon special verdicts? Why was an epithet, which is a legal conclusion from the fact,

extorted from a jury who were restrained from forming it themselves? The verdict must be taken to be general or special: if general, it has found the whole issue without a coextensive examination; if special, the word *Guilty*, which is a conclusion from facts, can have no place in it. Either this word *Guilty* is operative or unessential; an epithet of substance or of form. It is impossible to controvert that proposition, and I give the gentlemen their choice of the alternative. If they admit it to be operative and of real substance, or, to speak more plainly, that the fact of publication found specially, without the epithet of *guilty*, would have been an imperfect verdict inconclusive of the defendant's guilt, and on which no judgment could have followed: then it is impossible to deny that the defendant has suffered injustice, because such an admission confesses that a criminal conclusion from a fact has been obtained from the jury, without permitting them to exercise that judgment which might have led them to a conclusion of innocence; and that the word *Guilty* has been obtained from them at the trial as a mere matter of form, although the verdict without it, stating only the fact of publication, which they were directed to find, to which they thought the finding alone enlarged, and beyond which they had never enlarged their inquiry, would have been an absolute verdict of acquittal. If, on the other hand, to avoid this insuperable objection to the charge, the word *Guilty* is to be reduced to a mere word of form, and it is to be contended that the fact of publication found specially would have been tantamount: be it so; let the verdict be so recorded; let the word *Guilty* be expunged from it, and I instantly sit down; I trouble your Lordships no further. I withdraw my motion for a new trial, and will maintain in arrest of judgment that the Dean is not convicted. But if this is not conceded to me, and the word *Guilty*, though argued to be but form, and though as such obtained from the jury, is still preserved upon the record, and made use of against the defendant as substance, it will then become us (independently of all consideration as lawyers) to consider a little how that argument is to be made consistent with the honour of gentlemen, or that fairness of dealing which cannot but have place wherever justice is administered.

But in order to establish that the word *Guilty* is a word of essential substance, that the verdict would have been imperfect without it, and that therefore the defendant suffers by its insertion, I undertake to show your Lordship, upon every principle and authority of law, that if the fact of publication, which was all that was left to the jury, had been found by special verdict, no judgment could have been given on it.

My Lord, I will try this by taking the fullest finding which the facts in evidence could possibly have warranted. Supposing then, for instance, that the jury had found that the defendant published

the paper according to the tenor of the indictment, that it was written of and concerning the King and his Government, and that the innuendoes were likewise as averred, K meaning the present King, and P the present Parliament of Great Britain; on such a finding, no judgment could have been given by the Court, even if the record had contained a complete charge of a libel. No principle is more unquestionable than that, to warrant any judgment upon a special verdict, the Court, which can presume nothing that is not visible on the record, must see sufficient matter upon the face of it, which, if taken to be true, is conclusive of the defendant's guilt. They must be able to say, If this record be true, the defendant cannot be innocent of the crime which it charges on him. But from the facts of such a verdict the Court could arrive at no such legitimate conclusion; for it is admitted on all hands, and indeed expressly laid down by your Lordship in the case of the King against Woodfall, that publication even of a libel is not *conclusive* evidence of guilt, for that the defendant may give evidence of an innocent publication.

Looking, therefore, upon a record containing a good indictment of a libel, and a verdict finding that the defendant published it, but without the epithet of guilty, the Court could not pronounce that he published it with the malicious intention which is the essence of the crime; they could not say what might have passed at the trial; for anything that appeared to them, he might have given such evidence of innocent motive, necessity, or mistake, as might have amounted to excuse or justification. They would say, that the facts stated upon the verdict would have been fully sufficient, in the absence of a legal defence, to have warranted the Judge to have directed, and the jury to have given, a general verdict of guilty, comprehending the intention which constitutes the crime; but that to warrant the Bench, which is ignorant of everything at the trial, to presume that intention, and thereupon to pronounce judgment on the record, the jury must not merely find full evidence of the crime, but such facts as compose its legal definition. This wise principle is supported by authorities which are perfectly familiar.

If, in an action of trover, the plaintiff proves property in himself, possession in the defendant, and a demand and refusal of the thing charged to be converted, this evidence, unanswered, is full proof of a conversion; and, if the defendant could not show to the jury why he had refused to deliver the plaintiff's property on a legal demand of it, the Judge would direct them to find him guilty of the conversion. But on the same facts found by special verdict, no judgment could be given by the Court; the judges would say, If the special verdict contains the whole of the evidence given at the trial, the jury should have found the defendant guilty, for the conversion was fully proved; but we cannot declare these facts to

amount to a conversion, for the defendant's intention was a fact which the jury should have found from the evidence, over which we have no jurisdiction. So in the case put by Lord Coke, I believe, in his first Institute, 115. If a *modus* is found to have existed beyond memory till within thirty years before the trial, the Court cannot, upon such facts found by special verdict, pronounce against the *modus*; but any one of your Lordships would certainly tell the jury that, upon such evidence, they were warranted in finding against it. In all cases of prescription, the universal practice of judges is to direct juries, by analogy to the statute of limitations, to decide against incorporeal rights, which for many years have been relinquished; but such modern relinquishments, if stated upon the record by special verdict, would in no instance warrant a judgment against any prescription. The principle of the difference is obvious and universal; the Court, looking at a record, can presume nothing; it has nothing to do with reasonable probabilities, but is to establish legal certainties by its judgments. Every crime is, like every other complex idea, capable of a legal definition; if all the component parts which go to its formation are put as facts upon the record, the Court can pronounce the perpetrator of them a criminal; but if any of them are wanting, it is a chasm in fact, and cannot be supplied. Wherever intention goes to the essence of the charge, it must be found by the jury; it must be either comprehended under the word guilty in the general verdict, or specifically found as a fact by the special verdict. This was solemnly decided by the Court in Huggins's case, in second Lord Raymond, 1581, which was a special verdict of murder from the Old Bailey.

It was an indictment against John Huggins and James Barnes, for the murder of Edward Arne. The indictment charged that Barnes made an assault upon Edward Arne, being in the custody of the other prisoner, Huggins, and detained him for six weeks in a room newly built over the common sewer of the prison, where he languished and died. The indictment further charged that Barnes and Huggins well knew that the room was unwholesome and dangerous; the indictment then charged that the prisoner Huggins of his malice aforethought, was present, aiding and abetting Barnes to commit the murder aforesaid. This was the substance of the indictment.

• The special verdict found that Huggins was warden of the Fleet by letters-patent; that the other prisoner, Barnes, was servant to Gibbons Huggins, deputy in the care of all the prisoners, and of the deceased, a prisoner there. That the prisoner Barnes, on the 7th of September, put the deceased Arne in a room over the common sewer, which had been newly built, knowing it to be newly built, and damp, and situated as laid in the indictment; *and that fifteen days before the prisoner's death, HUGGINS likewise well knew*

that the room was new built, damp, and situated as laid. They found that, fifteen days before the death of the prisoner, Huggins was present in the room, and saw him there under duress of imprisonment, but then and there turned away, and Barnes locked the door; and that, from that time till his death, the deceased remained locked up.

It was argued before the twelve judges in Serjeants' Inn, whether Huggins was guilty of murder. It was agreed that he was not answerable, *criminally*, for the act of his deputy, and could not be guilty unless the criminal intention was brought personally home to himself. And it is remarkable how strongly the judges required the fact of knowledge and malice to be stated on the face of the verdict, as opposed to *evidence* of intention and inference from a fact.

The Court said, It is chiefly relied on that Huggins was present in the room, and saw Arne *sub duritie imprisonmenti, et se avertit*; but he might be present and not know all the circumstances. The words are *VIDIT sub duritie*; but he might *see* him under duress, and not *know* he was under duress. It was answered, that seeing him under duress evidently means he knew he was under duress; but, says the Court, "We cannot take things by inference in this manner; his seeing is but evidence of his knowledge of these things, and therefore the jury, if the fact would have borne it, should have found that Huggins knew he was there without his consent; which not being done, we cannot intend these things nor infer them; we must judge of facts, and not from the evidence of facts;" and cited Kelynge, 78, that whether a man be aiding and abetting a murder is matter of fact, and ought to be expressly found by a jury.

The application of these last principles and authorities to the case before the Court is obvious and simple. The criminal intention is a fact, and must be found by the jury, and that finding can only be expressed upon the record by the general verdict of guilty, which comprehends it; or by the special enumeration of such facts as do not merely amount to evidence of, but which completely and conclusively constitute the crime. But it has been shown, and is indeed admitted, that the publication of a libel is only *prima facie* evidence of the complex charge in the indictment, and not such a fact as amounts in itself, when specially stated, to conclusive guilt; since, as the judges cannot tell how the criminal inference from the fact of publishing a libel might have been rebutted at the trial, no judgment can follow from a special finding that the defendant published the paper indicted according to the tenor laid in the indictment. It follows from this, that if the jury had only found the fact of publication, which was all that was left to them, *without affixing the epithet of guilty*, which could only be legally affixed by an investigation not permitted to them,

a *venire facias de novo* must have been awarded because of the uncertainty of the verdict as to the criminal intention ; whereas it will now be argued that if the Court shall hold the dialogue to be a libel, the defendant is fully convicted ; because the verdict does not merely find that he PUBLISHED, which is a finding consistent with innocence, but finds him GUILTY of publishing, which is a finding of the criminal publication charged by the indictment.

My Lord, how I shall be able to defend my innocent client against such an argument I am not prepared to say. I feel all the weight of it ; but that feeling surely entitles me to greater attention when I complain of that which subjects him to it without the warrant of the law. It is the weight of such an argument that entitles me to a new trial ; for the Dean of St. Asaph is not only found guilty without any investigation of his guilt by the jury, but without that question being even open to your Lordships on the record. Upon the record the Court can only say the dialogue is or is not a libel ; but if it should pronounce it to be one, the criminal intention of the defendant in publishing it is taken for granted by the word Guilty ; although it has not only not been tried, but evidently appears from the verdict itself not to have been found by the jury. Their verdict is, " Guilty of publishing ; but whether a libel or not, they do not find." And it is, therefore, impossible to say that they can have found a criminal motive in publishing a paper on the criminality of which they have formed no judgment. Printing and publishing that which is legal contains in it no crime ; the guilt must arise from the publication of a libel ; and there is therefore a palpable repugnancy on the face of the verdict itself, which first finds the Dean guilty of publishing, and then renders the finding a nullity, by pronouncing ignorance in the jury whether the thing published comprehends any guilt.

To conclude this part of the subject, the epithet of guilty (as I set out with at first) must either be taken to be substance or form. If it be substance, and, as such, conclusive of the *criminal* intention of the publisher, should the thing published be hereafter adjudged to be a libel, I ask a new trial, because the defendant's guilt in that respect has been found without having been tried ; if, on the other hand, the word GUILTY is admitted to be but a word of form, then let it be expunged, and I am not hurt by the verdict.

Having now established, according to my two first propositions, that the jury, upon every general issue joined in a criminal case, have a constitutional jurisdiction over the whole charge, I am next, in support of my third, to contend that the case of a libel forms no legal exception to the general principles which govern the trial of all other crimes ; that the argument for the difference, viz., because the whole charge always appears on the record, is false in fact, and that, even if true, it would form no substantial difference in law.

As to the first, I still maintain that the whole case does by no means necessarily appear on the record. The Crown may indict part of the publication, which may bear a criminal construction when separated from the context, and the context omitted having no place in the indictment, the defendant can neither demur to it nor arrest the judgment after a verdict of guilty, because the Court is absolutely circumscribed by what appears on the record, and the record contains a legal charge of a libel.

I maintain likewise, that according to the principles adopted upon this trial, he is equally shut out from such defence before the jury; for though he may read the explanatory context in evidence, yet he can derive no advantage from reading it, if they are tied down to find him guilty of publishing the matter which is contained in the indictment, however its innocence may be established by a view of the whole work. The only operation which, looking at the context, it can have upon a jury, is to convince them that the matter upon the record, however libellous when taken by itself, was not intended to convey the meaning which the words indicted import in language, when separated from the general scope of the writing; but upon the principle contended for, they could not acquit the defendant upon any such opinion, for that would be to take upon them the prohibited question of libel, which is said to be matter of law for the Court.

My learned friend, Mr. Bearcroft, appealed to his audience with an air of triumph, whether any sober man could believe that an English jury, in the case I put from Algernon Sidney, would convict a defendant of publishing the Bible, should the Crown indict a member of a verse which was blasphemous in itself, if separated from the context? My Lord, if my friend had attended to me, he would have found that, in considering such supposition as an absurdity, he was only repeating my own words. I never supposed that a jury would act so wickedly, or so absurdly, in a case where the principle contended for by my friend Mr. Bearcroft carried so palpable a face of injustice as in the instance which I selected to expose it, and which I therefore selected to show that there were cases in which the supporters of the doctrine were ashamed of it, and obliged to deny its operation; for it is impossible to deny that, if the jury can look at the context in the case put by Sidney, and acquit the defendant on the merits of the thing published, they may do it in cases which will directly operate against the principle he seems to support. This will appear from other instances where the injustice is equal, but not equally striking.

Suppose the Crown were to select some passage from Locke upon Government, as for instance, "that there was no difference *between the King and the constable when either of them exceeded their authority.*" That assertion, under certain circumstances, if taken by itself without the context, might be highly seditious, and the

question therefore would be *quo animo* it was written ; perhaps the real meaning of the sentence might not be discoverable by the immediate context without a view of the whole chapter,—perhaps of the whole book ; therefore, to do justice to the defendant, upon the very principle by which Mr. Bearcroft, in answering Sidney's case, can alone acquit the publisher of his Bible, the jury must look into the whole " Essay on Government," and form a judgment of the design of the author, and the meaning of his work.

Lord MANSFIELD. To be sure, they may judge from the whole work.

Mr. ERSKINE. And what is this, my Lord, but determining the question of libel which is denied to-day ? for if a jury may acquit the publisher of any part of Mr. Locke on Government, from a judgment arising out of a view of the whole book, though there be no innuendoes to be filled up as facts in the indictment,—what is it that bound the jury to convict the Dean of St. Asaph as the publisher of Sir William Jones's Dialogue, on the bare fact of publication, without the right of saying that his observations, as well as Mr. Locke's, were speculative, abstract, and legal ?

Lord MANSFIELD. They certainly may, in all cases, go into the whole context.

Mr. ERSKINE. And why may they go into the context ? Clearly, my Lord, to enable them to form a correct judgment of the meaning of the part indicted, even though no particular meaning be submitted to them by averments in the indictment ; and therefore, the very permission to look at the context for such a purpose (where there are no innuendoes to be filled up by them as facts), is a palpable admission of all I am contending for, viz., the right of the jury to judge of the merits of the paper, and the intention of its author.*

But it is said, that though a jury have a right to decide that a paper, criminal as far as it appears on the record, is nevertheless legal when explained by the whole work of which it is a part ; yet that they shall have no right to say that the whole work itself, if it happens to be all indicted, is innocent and legal. This proposition, my Lord, upon the bare stating of it, seems too preposterous to be seriously entertained ; yet there is no alternative between maintaining it in its full extent, and abandoning the whole argument.

If the defendant is indicted for publishing part of the verse in the Psalms, " There is no God," it is asserted that the jury may look at the context, and, seeing that the whole verse did not maintain that blasphemous proposition, but only that the fool had said so in his heart, may acquit the defendant upon a judgment that it is no libel to impute such imagination to a fool ; but if the whole verse had been indicted, viz., " The fool has said in his heart, There is no God," the jury, on the principle contended for, would

* The right was fully exercised by the jury who tried and acquitted Mr. Stockdale.

be restrained from the same judgment of its legality, and must convict of blasphemy on the fact of publishing, leaving the question of libel untouched on the record.

If, in the same manner, only part of this very dialogue had been indicted, instead of the whole, it is said even by your Lordship that the jury might have read the context, and then, notwithstanding the fact of publishing, might have collected from the whole its abstract and speculative nature, and have acquitted the defendant upon that judgment of it; and yet it is contended that they have no right to form the same judgment of it upon the present occasion, although the whole be before them upon the face of the indictment, but are bound to convict the defendant upon the fact of publishing, notwithstanding they should have come to the same judgment of its legality, which, it is admitted, they might have come to on trying an indictment for the publication of a part. Really, my Lord, the absurdities and gross departures from reason which must be hazarded to support this doctrine, are endless.

The criminality of the paper is said to be a question of law, yet the meaning of it, from which alone the legal interpretation can arise, is admitted to be a question of fact. If the text be so perplexed and dubious as to require innuendoes to explain, to point, and to apply obscure expression or construction, the jury alone, as judges of fact, are to interpret and to say what sentiments the author must have meant to convey by his writing: yet if the writing be so plain and intelligible as to require no averments of its meaning, it then becomes so obscure and mysterious as to be a question of law, and beyond the reach of the very same men who but a moment before were interpreters for the judges; and though its object be most obviously peaceable, and its author innocent, they are bound to say upon their oaths, that it is wicked and seditious, and the publisher of it guilty.

As a question of fact, the jury are to try the real sense and construction of the words indicted, by comparing them with the context; and yet, if that context itself, which affords the comparison, makes part of the indictment, the whole becomes a question of law, and they are then bound down to convict the defendant on the fact of publishing it, without any jurisdiction over the meaning. To complete the juggle, the intention of the publisher may likewise be shown as a fact, by the evidence of any extrinsic circumstances, such as the context to explain the writing, or the circumstances of mistake or ignorance under which it was published; and yet in the same breath, the intention is pronounced to be an inference of law from the act of publication, which the jury cannot exclude, but which must depend upon the future judgment of the Court.

But the danger of this system is no less obvious than its absurdity. I do not believe that its authors ever thought of inflicting death upon Englishmen without the interposition of a jury; yet its estab-

lishment would unquestionably extend to annihilate the substance of that trial in every prosecution for high treason, where the publication of any writing was laid as the overt act. I illustrated this by a case when I moved for a rule, and called upon my friends for an answer to it, but no notice has been taken of it by any of them. This was just what I expected: when a convincing answer cannot be found to an objection, those who understand controversy never give strength to it by a weak one.

I said, and I again repeat, that if an indictment charges that a defendant did traitorously intend, compass, and imagine the death of the King, and in order to carry such treason into execution, published a paper, which it sets out *literatim* on the face of the record, the principle which is laid down to-day would subject that person to the pains of death by the single authority of the judges, without leaving anything to the jury, but the bare fact of publishing the paper; for if that fact were proved, and the defendant called no witnesses, the Judge who tried him would be warranted, nay, bound in duty, by the principle in question, to say to the jury—Gentlemen, the overt act of treason charged upon the defendant is the publication of this paper intending to compass the death of the King. The fact is proved, and you are therefore bound to convict him,—the treasonable intention is an inference of law from the act of publishing,—and if the thing published does not upon a future examination intrinsically support that inference, the Court will arrest the judgment, and your verdict will not affect the prisoner.

My Lord, I will rest my whole argument upon the analogy between these two cases, and give up every objection to the doctrine when applied to the one, if upon the strictest examination, it shall not be found to apply equally to the other.

If the seditious intention be an inference of law, from the fact of publishing the paper which this indictment charges to be a libel, is not the treasonable intention equally an inference from the fact of publishing that paper, which the other indictment charges to be an overt act of treason? In the one case, as in the other, the writing or publication of a paper is the whole charge; and the substance of the paper so written or published makes all the difference between the two offences. If that substance be matter of law where it is a seditious libel, it must be matter of law where it is an act of treason; and if, because it is law, the jury are excluded from judging it in the one instance, their judgment must suffer an equal abridgment in the other.

The consequence is obvious. If the jury, by an appeal to their consciences, are to be thus limited in the free exercise of that right which was given them by the constitution, to be a protection against judicial authority, where the weight and majesty of the Crown is put into the scale against an obscure individual, the freedom of the press is at an end. For how can it be said that the press is free,

because everything may be published without a previous licence, if the publisher of the most meritorious work which the united powers of genius and patriotism ever gave to the world may be prosecuted by information of the King's Attorney-General, without the consent of the Grand Jury,—may be convicted by the petty jury, on the mere fact of publishing (who indeed, without perjuring themselves, must on this system inevitably convict him), and must then depend upon judges who may be the supporters of the very Administration whose measures are questioned by the defendant, and who must therefore either give judgment against him or against themselves.

To all this Mr. Bearcroft shortly answers, Are you not in the hands of the same judges, with respect to your property and even to your life, when special verdicts are found in murder, felony, and treason? In these cases do prisoners run any hazard from the application of the law by the judges to the facts found by the juries? Where can you possibly be safer?

My Lord, this is an argument which I can answer without indecency or offence, because your Lordship's mind is much too liberal to suppose that I insult the Court by general observations on the principles of our legal government. However safe we might be, or might think ourselves, the constitution never intended to invest judges with a discretion which cannot be tried and measured by the plain and palpable standard of law; and in all the cases put by Mr. Bearcroft, no such loose discretion is exercised as must be entertained by a judgment on a seditious libel, and therefore the cases are not parallel.

On a special verdict for murder, the life of the prisoner does not depend upon the religious, moral, or philosophical ideas of the judges concerning the nature of homicide. No; precedents are searched for, and if he is condemned at all, he is judged exactly by the same rule as others have been judged by before him; his conduct is brought to a precise, clear, intelligible standard, and cautiously measured by it. It is the law, therefore, and not the Judge, which condemns him. It is the same in all indictments or civil actions for slander upon individuals.

Reputation is a personal right of the subject, indeed the most valuable of any, and it is, therefore, secured by law, and all injuries to it clearly ascertained. Whatever slander hurts a man in his trade, subjects him to danger of life, liberty, or loss of property, or tends to render him infamous, is the subject of an action, and in some instances of an indictment. But in all these cases where the *malus animus* is found by the jury, the judges are in like manner a safe repository of the legal consequence, because such libels may be brought to a well-known standard of strict and positive law,—they leave no discretion in the judges,—the determination of what words, when written or spoken of another, are actionable, or the

subject of an indictment, leaves no more latitude to a Court sitting in judgment on the record than a question of title does in a special verdict in ejectment.

But I beseech your Lordship to consider by what rule the legality or illegality of this dialogue is to be decided by the Court, as a question of law, upon the record. Mr. Bearcroft has admitted in the most unequivocal terms (what indeed it was impossible for him to deny), that every part of it, when viewed in the abstract, was legal; but he says there is a great distinction to be taken between speculation and exhortation, and that it is this latter which makes it a libel. I readily accede to the truth of the observation; but how your Lordship is to determine that difference as a question of law is past my comprehension; for if the dialogue in its phrase and composition be general, and its libellous tendency arises from the purpose of the writer to raise discontent by a seditious application of legal doctrines,—that purpose is surely a question of fact, if ever there was one, and must therefore be distinctly averred in the indictment, to give the cognizance of it as a fact to the jury, without which no libel can possibly appear upon the record. This is well known to be the only office of the innuendo, because the judges can presume nothing which the strictest rules of grammar do not warrant them to collect intrinsically from the writing itself.

Circumscribed by the record, your Lordship can form no judgment of the tendency of this dialogue to excite sedition by anything but the mere words: you must look at it as if it was an old manuscript dug out of the ruins of Herculaneum; you can collect nothing from the time when, or the circumstances under which, it was published, the person by whom, and those amongst whom, it was circulated; yet these may render a paper at one time, and under some circumstances, dangerously wicked and seditious, which at another time, and under different circumstances, might be innocent and highly meritorious. If puzzled by a task so inconsistent with the real sense and spirit of judicature, your Lordships should spurn the fetters of the record, and, judging with the reason rather than the infirmities of men, should take into your consideration the state of men's minds on the subject of equal representation at this moment, and the great disposition of the present times to revolution in government: if reading the record with these impressions, your Lordships should be led to a judgment not warranted by an abstract consideration of the record, then, besides that such a judgment would be founded on facts not in evidence before the Court, and not within its jurisdiction if they were,—let me further remind your Lordships, that even if those objections to the premises were removed, the conclusion would be no conclusion of law: your decision on the subject might be very sagacious as politicians, as moralists, as philosophers, or as licensers of the press, but they would have no resemblance to the

judgments of an English court of justice, because it could have no warrant from the act of your predecessors, nor afford any precedent to your successors.

But all these objections are perfectly removed, when the seditious tendency of a paper is considered as a question of fact: we are then relieved from the absurdity of legal discussion separated from all the facts from which alone the law can arise; for the jury can do what (as I observed before) your Lordships cannot do in judging by the record; they can examine by evidence all those circumstances that tend to establish the seditious tendency of the paper, from which the Court is shut out: they may know themselves, or it may be proved before them, that it has excited sedition already: they may collect from witnesses that it has been widely circulated, and seditiously understood; or, if the prosecution (as is wisest) precedes these consequences, and the reasoning must be *à priori*, surely gentlemen living in the country are much better judges than your Lordship, what has or has not a tendency to disturb the neighbourhood in which they live, and that very neighbourhood is the forum of criminal trial.

If they know that the subject of the paper is the topic that agitates the country around them; if they see danger in that agitation, and have reason to think that the publisher must have intended it; they say he is guilty. If, on the other hand, they consider the paper to be legal, and enlightened in principle; likely to promote a spirit of activity and liberty in times when the activity of such a spirit is essential to the public safety, and have reason to believe it to be written and published in that spirit, they say, as they ought to do, that the writer or the publisher is not guilty. Whereas your Lordships' judgment upon the language of the record must ever be in the pure abstract; operating blindly and indiscriminately upon all times, circumstances, and intentions; making no distinction between the glorious attempts of a Sidney or a Russel, struggling against the terrors of despotism under the Stuarts, and those desperate adventurers of the year forty-five, who libelled the person, and excited rebellion against the mild and gracious government of our late excellent sovereign King George II.

My Lord, if the independent gentlemen of England are thus better qualified to decide from cause of knowledge, it is no offence to the Court to say, that they are full as likely to decide with impartial justice as judges appointed by the Crown. Your Lordships have but a life-interest in the public property, but they have an inheritance in it for their children. Their landed property depends upon the security of the Government, and no man who wantonly attacks it can hope or expect to escape from the selfish lenity of a jury. On the first principles of human action they must lean heavily against him. It is only when the pride of

Englishmen is insulted by such doctrines as I am opposing to-day, that they may be betrayed into a verdict delivering the guilty, rather than surrender the rights by which alone innocence in the day of danger can be protected.

I venture therefore to say, in support of one of my original propositions, that where a writing indicted as a libel, neither contains, nor is averred by the indictment to contain, any slander of an individual so as to fall within those rules of law which protect personal reputation, but whose criminality is charged to consist (as in the present instance) in its tendency to stir up general discontent, that the trial of such an indictment neither involves, nor can in its obvious nature involve, any abstract question of law for the judgment of a Court, but must wholly depend upon the judgment of the jury on the tendency of the writing itself, to produce such consequences, when connected with all the circumstances which attended its publication.

It is unnecessary to push this part of the argument further, because I have heard nothing from the Bar against the position which it maintains; none of the gentlemen have, to my recollection, given the Court any one single reason, good or bad, why the *tendency* of a paper to stir up discontent against Government, separated from all the circumstances which are ever shut out from the record, ought to be considered as an abstract question of law: they have not told us where we are to find any matter in the books to enable us to argue such questions before the Court; or where your Lordships yourselves are to find a rule for your judgments on such subjects. I confess that to me it looks more like legislation, or arbitrary power, than English judicature. If the Court can say, this is a criminal writing, *not* because we know that mischief was intended by its author, or is even contained in itself, but because fools, believing the one and the other, may do mischief in their folly, the suppression of such writings under particular circumstances may be wise policy in a state; but upon what principle it can be criminal law in England, to be settled in the abstract by judges, I confess with humility that I have no organs to understand.

Mr. Leycester felt the difficulty of maintaining such a proposition by any argument of law, and therefore had recourse to an argument of fact. "If," says my learned friend, "what is or is not a seditious libel, be not a question of law for the Court, but of fact for the jury, upon what principle do defendants found guilty of such libels by a general verdict, defeat the judgment for error on the record? and what is still more in point, upon what principle does Mr. Erskine himself, if he fails in his present motion, mean to ask your Lordships to arrest this very judgment by saying that the dialogue is not a libel?"

My Lord, the observation is very ingenious, and God knows the

argument requires that it should; but it is nothing more. The arrest of judgment which follows after a verdict of guilty for publishing a writing, which on inspection of the record exhibits to the Court no specific offence against the law, is no impeachment of my doctrine. I never denied such a jurisdiction to the Court. My position is, that no man shall be punished for the criminal breach of any law, until a jury of his equals have pronounced him guilty in mind as well as in act. *Actus non facit reum nisi mens sit rea.*

But I never asserted that a jury had the power to make criminal law as well as to administer it; and therefore it is clear that they cannot deliver over a man to punishment if it appears by the record of his accusation, which it is the office of judicature to examine, that he has not offended against any positive law; because, however criminal he may have been in his disposition, which is a fact established by the verdict, yet statute and precedents can alone decide what is by law an *indictable* offence.

If, for instance, a man were charged by an indictment with having held a discourse in words highly seditious, and were found guilty by the jury, it is evident that it is the province of the Court to arrest that judgment; because though the jury have found that he spoke the words as laid in the indictment, with the seditious intention charged upon him, which they, and they only, could find; yet as the words are not punishable by indictment, as when committed to writing, the Court could not pronounce judgment: the declaration of the jury, that the defendant was guilty in manner and form as accused, could evidently never warrant a judgment, if the accusation itself contained no charge of an offence against the law.

In the same manner, if a butcher were indicted for privately putting a sheep to causeless and unnecessary torture in the exercise of his trade, but not in public view, so as to be productive of evil example, and the jury should find him guilty, I am afraid that no judgment could follow; because, though done *malo animo*, yet neither statute nor precedent have perhaps determined it to be an indictable offence; it would be difficult to draw the line. An indictment would not lie for every inhuman neglect of the sufferings of the smallest innocent animals which Providence has subjected to us.

"Yet the poor beetle which we tread upon,
In corporal suffering feels a pang as great
As when a giant dies."

A thousand other instances might be brought of acts base and immoral, and prejudicial in their consequences, which are not yet indictable by law.

In the case of the King against Brewer, in Cowper's Reports, it was held that *knowingly* exposing to sale and selling gold under

sterling for standard gold, is not indictable ; because the act refers to goldsmiths only, and private cheating is not a common-law offence. Here, too, the declaration of the jury, that the defendant is guilty in manner and form as accused, does not change the nature of the accusation : the verdict does not go beyond the charge ; and if the charge be invalid in law, the verdict must be invalid also. All these cases, therefore, and many similar ones which might be put, are clearly consistent with my principles. I do not seek to erect jurors into legislators or judges : there must be a rule of action in every society which it is the duty of the legislature to create, and of judicature to expound when created. I only support their right to determine guilt or innocence where the crime charged is blended by the general issue with the intention of the criminal ; more especially when the quality of the act itself, even independent of that intention, is not measurable by any precise principle or precedent of law, but is inseparably connected with the time when, the place where, and the circumstances under which, the defendant acted.

My Lord, in considering libels of this nature, as opposed to slander on individuals, to be mere questions of fact, or at all events to contain matter fit for the determination of the jury, I am supported not only by the general practice of Courts, but even of those very practisers themselves who, in prosecuting for the Crown, have maintained the contrary doctrine.

Your Lordships will, I am persuaded, admit that the general practice of the profession, more especially of the very heads of it, prosecuting too for the public, is strong evidence of the law. Attorney-Generals have seldom entertained such a jealousy of the King's judges in state prosecutions, as to lead them to make presents of jurisdiction to juries, which did not belong to them of right by the constitution of the country. Neither can it be supposed that men in high office and of great experience, should in every instance, though differing from each other in temper, character, and talents, uniformly fall into the same absurdity of declaiming to juries upon topics totally irrelevant, when no such inconsistency is found to disfigure the professional conduct of the same men in other cases. Yet I may appeal to your Lordships' recollection, without having recourse to the State Trials, whether upon every prosecution for a seditious libel within living memory, the Attorney-General has not uniformly stated such writings at length to the jury, pointed out their seditious tendency, which rendered them criminal, and exerted all his powers to convince them of their illegality, as the very point on which their verdict for the Crown was to be founded.

On the trial of Mr. Horne, for publishing an advertisement in favour of the widows of those American subjects who had been *murdered* by the King's troops at Lexington, did the present Chancellor, then Attorney-General, content himself with saying

that he had proved the publication, and that the criminal quality of the paper, which raised the legal inference of guilt against the defendant, was matter for the Court? No, my Lord; he went at great length into its dangerous and pernicious tendency, and applied himself with skill and ability to the understandings and the consciences of the jurors. This instance is in itself decisive of his opinion: that great magistrate could not have acted thus upon the principle contended for to-day:—he never was an idle declaimer;—close and masculine argument is the characteristic of his understanding.

The character and talents of the late Lord Chief-Justice De Grey no less entitle me to infer his opinion from his uniform conduct. In all such prosecutions while he was in office, he held the same language to juries; and particularly in the case of the King against Woodfall, *to use the expression of a celebrated writer on the occasion*, “he tortured his faculties for more than two hours, to convince them that Junius’s letter was a libel.”

The opinions of another Crown lawyer, who has since passed through the first offices of the law, and filled them with the highest reputation, I am not driven to collect alone from his language as an Attorney-General; because he carried them with him to the seat of justice. Yet one case is too remarkable to be omitted.

Lord Camden prosecuting Doctor Shebbeare, told the jury that he did not desire their verdict upon any other principle than their solemn conviction of the truth of the information, which charged the defendant with a wicked design to alienate the hearts of the subjects of this country from their King upon the throne.

To complete the account: my learned friend, Mr Bearcroft, though last, not least in favour, upon this very occasion, spoke above an hour to the jury at Shrewsbury, to convince them of the libellous tendency of the dialogue, which soon afterwards the learned Judge desired them wholly to dismiss from their consideration, as matter with which they had no concern. The real fact is, that the doctrine is too absurd to be acted upon;—too distorted in principle to admit of consistency in practice: it is contraband in law, and can only be smuggled by those who introduce it:—it requires great talents and great address to hide its deformity:—in vulgar hands it becomes contemptible.

Having supported the rights of juries, by the uniform practice of Crown lawyers, let us now examine the question of authority, and see how this Court itself, and its judges, have acted upon trials for libels in former times; for, according to Lord Raymond, in Franklin’s case (as cited by Mr. Justice Buller, at Shrewsbury), the principle I am supporting had, it seems, been only broached about the year 1731, by some men of party spirit, and then, too, for the very first time.

My Lord, such an observation in the mouth of Lord Raymond,

proves how dangerous it is to take up, as doctrine, everything flung out at *nisi prius*; above all, upon subjects which engage the passions and interests of Government. The most solemn and important trials with which history makes us acquainted, discussed too at the bar of this Court when filled with judges the most devoted to the Crown, afford the most decisive contradiction to such an unfounded and unguarded assertion.

In the famous case of the Seven Bishops, the question of libel or no libel was held unanimously by the Court of King's Bench, trying the cause at the bar, to be matter for the consideration and determination of the jury; and the Bishops' petition to the King, which was the subject of the information, was accordingly delivered to them when they withdrew to consider of their verdict.

Thinking this case decisive, I cited it at the trial, and the answer it received from Mr. Bearcroft was, that it had no relation to the point in dispute between us, for that the Bishops were acquitted, not upon the question of libel, but because the delivery of the petition to the King was held to be no publication.

I was not a little surprised at this statement, but my turn of speaking was then past; fortunately to-day it is my privilege to speak last, and I have now lying before me the fifth volume of the "State Trials," where the case of the Bishops is printed, and where it appears that the publication was expressly proved,—that nothing turned upon it in the judgment of the Court,—and that the charge turned wholly upon the question of libel, which was expressly left to the jury by every one of the judges. Lord Chief-Justice Wright, in summing up the evidence, told them that a question had at first arisen about the publication, it being insisted on that the delivery of the petition to the King had not been proved; that the Court was of the same opinion, and that he was just going to have directed them to find the Bishops not guilty, when in came my Lord President (such sort of witnesses were no doubt always at hand when wanted), who proved the delivery to His Majesty. "Therefore," continued the Chief-Justice, "if you believe it was the same petition, it is a publication sufficient, and we must, therefore, come to inquire whether it be a libel."

He then gave his reasons for thinking it within the case *de libellis famosis*, and concluded by saying to the jury, "In short, I must give you my opinion: I do take it to be a libel; if my brothers have anything to say to it, I suppose they will deliver their opinion." What opinion? Not that the jury had no jurisdiction to judge of the matter, but an opinion for the express purpose of enabling them to give that judgment which the law required at their hands.

Mr. Justice Holloway then followed the Chief-Justice; and so pointedly was the question of libel or no libel, and not the publication, the only matter which remained in doubt, and which the jury, with the assistance of the Court, were to decide upon, that when

the learned Judge went into the facts which had been in evidence, the Chief-Justice said to him, "Look you; by the way, brother, I did not ask you to sum up the evidence, but only to deliver your opinion to the jury, whether it be a libel or no." The Chief-Justice's remark, though it proves my position, was, however, very unnecessary; for but a moment before, Mr. Justice Holloway had declared he did not think it was a libel, but addressing himself to the jury had said, "*It is left to you, gentlemen.*"

Mr. Justice Powell, who likewise gave his opinion that it was no libel, said to the jury, "*But the matter of it is before you, and I leave the issue of it to God and your own consciences;*" and so little was it an idea of any one of the Court that the jury ought to found their verdict solely upon the evidence of the publication, without attending to the criminality or innocence of the petition;—that the Chief-Justice himself consented, on their withdrawing from the bar, that they should carry with them all the materials for coming to a judgment as comprehensive as the charge; and, indeed, expressly directed that the information, the libel, the declarations under the great seal, and even the statute-book, should be delivered to them.

The happy issue of this memorable trial, in the acquittal of the Bishops by the jury, exercising jurisdiction over the whole charge, freely admitted to them as legal even by King James' judges, is admitted by two of the gentlemen to have prepared and forwarded the glorious era of the Revolution. Mr. Bower, in particular, spoke with singular enthusiasm concerning this verdict, choosing (for reasons sufficiently obvious) to ascribe it to a special miracle wrought for the safety of the nation, rather than to the right lodged in the jury to save it by its laws and constitution.

My learned friend, finding his argument like nothing upon the earth, was obliged to ascend into heaven to support it:—having admitted that the jury not only acted like just men towards the Bishops, but as patriot citizens towards their country, and not being able, without the surrender of his whole argument, to allow either their public spirit or their private justice to have been consonant to the laws, he is driven to make them the instruments of Divine Providence to bring good out of evil, and holds them up as men inspired by God to perjure themselves in the administration of justice, in order, by the by, to defeat the effects of that wretched system of judicature, which he is defending to-day as the constitution of England. For if the King's judges could have decided the petition to be a libel, the Stuarts might yet have been on the throne.

My Lord, this is an argument of a priest, not of a lawyer: and even if faith and not law were to govern the question, I should be as far from subscribing to it as a religious opinion.

No man believes more firmly than I do that God governs the

whole universe by the gracious dispensations of His providence, and that all the nations of the earth rise and fall at His command ; but then this wonderful system is carried on by the natural, though to us the often hidden, relation between effects and causes, which wisdom adjusted from the beginning, and which foreknowledge at the same time rendered sufficient, without disturbing either the laws of nature or of civil society.

The prosperity and greatness of empires ever depended, and ever must depend, upon the use their inhabitants make of their reason in devising wise laws, and the spirit and virtue with which they watch over their just execution : and it is impious to suppose that men, who have made no provision for their own happiness or security in their attention to their government, are to be saved by the interposition of Heaven in turning the hearts of their tyrants to protect them.

But if every case in which judges have left the question of libel to juries in opposition to law is to be considered as a miracle, England may vie with Palestine, and Lord Chief-Justice Holt steps next into view as an apostle, for that great Judge, in Tutchin's case, left the question of libel to the jury in the most unambiguous terms. After summing up the evidence of writing and publishing, he said to them as follows :—

“ You have now heard the evidence, and you are to consider whether Mr. Tutchin be guilty. They say they are innocent papers and no libels, and they say nothing is a libel but what reflects upon some particular person. But this is a very strange doctrine, to say it is not a libel reflecting on the Government, endeavouring to possess the people that the Government is mal-administered by corrupt persons that are employed in such or such stations either in the navy or army.

“ To say that corrupt officers are appointed to administer affairs is certainly a reflection on the Government. If people should not be called to account for possessing the people with an ill opinion of the Government, no Government can subsist. For it is very necessary for all Governments that the people should have a good opinion of it, and nothing can be worse to any Government than to endeavour to procure animosities as to the management of it ; this has been always looked upon as a crime, and no Government can be safe without it be punished.”

Having made these observations, did the Chief-Justice tell the jury that whether the publication in question fell within that principle, so as to be a libel on Government, was a matter of law for the Court, with which they had no concern ? Quite the contrary : he considered the seditious tendency of the paper as a question for their sole determination, saying to them.—

“ Now, you are to consider whether these words I have read to you do not tend to beget an ill opinion of the administration of the

Government; to tell us that those that are employed know nothing of the matter, and those that do know are not employed; men are not adapted to offices, but offices to men, out of a particular regard to their interest, and not to their fitness for the places. This is the purport of these papers."

In citing the words of judges in judicature I have a right to suppose their discourse to be pertinent and relevant, and that when they state the defendant's answer to the charge and make remarks on it, they mean that the jury should exercise a judgment under their direction. This is the practice we must certainly impute to Lord Holt, if we do him the justice to suppose that he meant to convey the sentiments which he expressed. So that, when we come to sum up this case, I do not find myself so far behind the learned gentleman, even in point of express authority, putting all reason and the analogies of law which unite to support me wholly out of the question.

There is Court of King's Bench against Court of King's Bench; Chief-Justice Wright against Chief-Justice Lee; and Lord Holt against Lord Raymond. As to living authorities, it would be invidious to class them; but it is a point on which I am satisfied myself, and on which the world will be satisfied likewise, if ever it comes to be a question.

But even if I should be mistaken in that particular, I cannot consent implicitly to receive any doctrine as the law of England, though pronounced to be such by magistrates the most respectable, if I find it to be in direct violation of the very first principles of English judicature. The great jurisdictions of the country are unalterable except by Parliament, and until they are changed by that authority, they ought to remain sacred. The judges have no power over them. What parliamentary abridgment has been made upon the rights of juries since the trial of the Bishops, or since Tutchin's case, when they were fully recognised by this Court?—None. Lord Raymond and Lord Chief-Justice Lee ought therefore to have looked there—to their predecessors—for the law, instead of setting up a new one for their successors.

But supposing the Court should deny the legality of all these propositions, or admitting their legality, should resist the conclusions I have drawn from them, then I have recourse to my last proposition, in which I am supported even by all those authorities on which the learned Judge relies for the doctrines contained in his charge, to wit:—

"That in all cases where the mischievous intention, which is agreed to be the essence of the crime, cannot be collected by simple inference from the fact charged, because the defendant goes into evidence to rebut such inference, the intention becomes then a pure unmixed question of fact for the consideration of the jury."

I said the authorities of the King against Woodfall and Almon

were with me. In the first, which is reported in 5th Burrow, your Lordship expressed yourself thus :—"Where an act, in itself indifferent, becomes criminal when done with a particular intent, there the intent must be proved and found. But where the act is itself unlawful, as in the case of a libel, the PROOF of justification or excuse lies on the defendant, *and in failure thereof, the law implies a criminal intent.*" Most luminously expressed to convey this sentiment, viz., that when a man publishes a libel, and has nothing to say for himself, no explanation or exculpation, a criminal intention need not be proved. I freely admit that it need not; it is an inference of common sense, not of law. But the publication of a libel does not exclusively show criminal intent, but is only an implication of law in failure of the defendant's proof. Your Lordship immediately afterwards in the same case explained this further :—"There may be cases where the publication may be justified or excused as lawful or *innocent*, FOR NO FACT WHICH IS NOT CRIMINAL, though the paper *be a libel*, can amount to *such* a publication of which a defendant ought to be found guilty." But no question of that kind arose at the trial (i.e., on the trial of Woodfall). Why? Your Lordship immediately explained why—"Because the defendant called no witnesses;" expressly saying that the publication of a libel is not in itself a crime unless the intent be criminal; and that it is not merely in mitigation of punishment, but that such a publication does not warrant a verdict of guilty.

In the case of the King against Almon, a magazine containing one of Junius's letters was sold at Almon's shop. There was proof of that sale at the trial. Mr. Almon called no witnesses, and was found guilty. To found a motion for a new trial, an affidavit was offered from Mr. Almon, that he was not privy to the sale, nor knew his name was inserted as a publisher, and that this practice of booksellers being inserted as publishers by their correspondents without notice was common in the trade.

Your Lordship said, "Sale of a book in a bookseller's shop is *primâ facie* evidence of publication by the master, and the publication of a libel is *primâ facie* evidence of criminal intent. It stands good till answered by the defendant. It must stand till contradicted or explained, *and if not contradicted, explained, or exculpated*, BECOMES tantamount to conclusive when the defendant calls no witnesses."

Mr. Justice Aston said, "*Primâ facie* evidence not answered is sufficient to ground a verdict upon. If the defendant had a sufficient excuse, he might have proved it at the trial. His having neglected it where there was no surprise, is no ground for a new one." Mr. Justice Willes and Mr. Justice Ashurst agreed upon those express principles.

These cases declare the law, beyond all controversy, to be, that publication, even of a libel, is no conclusive proof of guilt, but

only *prima facie* evidence of it till answered, and that, if the defendant can show that his intention was not criminal, he completely rebuts the inference arising from the publication, because, though it remains true that he published, yet, according to your Lordship's express words, it is not such a publication of which a defendant ought to be found guilty. Apply Mr. Justice Buller's summing up to this law, and it does not require even a legal apprehension to distinguish the repugnancy.

The advertisement was proved to convince the jury of the Dean's motive for publishing. Mr. Jones's testimony went strongly to aid it, and the evidence to character, though not sufficient in itself, was admissible to be thrown into the scale. But not only no part of this was left to the jury, but the whole of it was expressly removed from their consideration, although, in the cases of Woodfall and Almon, it was as expressly laid down to be within their cognisance, and a complete answer to the charge if satisfactory to the minds of the jurors.

In support of the learned Judge's charge, there can be therefore but the two arguments which I stated on moving for the rule:— Either that the defendant's evidence, namely, the advertisement, Mr. Jones's evidence in confirmation of its being *bonâ fide*, and the evidence to character to strengthen that construction, were not sufficient proof that the Dean believed the publication meritorious, and published it in vindication of his honest intentions; or else, that, even admitting it to establish that fact, it did not amount to such an exculpation as to be evidence on Not Guilty, so as to warrant a verdict. I still give the learned Judge the choice of the alternative.

As to the first, viz., whether it showed honest intention in point of fact, that was a question for the jury. If the learned Judge had thought it was not sufficient evidence to warrant the jury's believing that the Dean's motives were such as he had declared them, I conceive he should have given his opinion of it as a point of evidence, and left it there. I cannot condescend to go further; it would be ridiculous to argue a self-evident proposition.

As to the second, viz., that even if the jury had believed from the evidence that the Dean's intention was wholly innocent, it would not have warranted them in acquitting, and therefore should not have been left to them upon Not Guilty; that argument can never be supported. For, if the jury had declared, "We find that the Dean published this pamphlet, whether a libel or not we do not find; and we find further, that, believing it in his conscience to be meritorious and innocent, he, *bonâ fide*, published it with the prefixed advertisement as a vindication of his character from the reproach of seditious intentions, and not to excite sedition," it is impossible to say, without ridicule, that on such a special verdict the Court could have pronounced a criminal judgment.

Then why was the consideration of that evidence, by which those facts might have been found, withdrawn from the jury, after they brought in a verdict—Guilty of publishing *ONLY*, which, in the King against Woodfall, was only said not to negative the criminal intention, because the defendant called no witnesses? Why did the learned Judge confine his inquiries to the innuendoes, and finding them agreed to, direct the epithet of Guilty, without asking the jury if they believed the defendant's evidence to rebut the criminal inference? Some of them positively meant to negative the criminal inference by adding the word *only*, and all would have done it if they had thought themselves at liberty to enter upon that evidence. But they were told expressly that they had nothing to do with the consideration of that evidence, which, if believed, would have warranted that verdict. The conclusion is evident:—If they had a right to consider it, and their consideration might have produced such a verdict, and if such a verdict would have been an acquittal, it must be a misdirection.

“But,” says Mr. Bower, “if this advertisement, prefixed to the publication, by which the Dean professed his innocent intention in publishing it, should have been left to the jury as evidence of that intention, to found an acquittal on, even taking the dialogue to be a libel, no man could ever be convicted of publishing anything, however dangerous; for he would only have to tack an advertisement to it by way of preface, professing the excellence of its principles and the sincerity of his motives, and his defence would be complete.”

My Lord, I never contended for any such position. If a man of education, like the Dean, were to publish a writing so palpably libellous that no ignorance or misapprehension imputable to such a person could prevent his discovering the mischievous design of the author, no jury would believe such an advertisement to be *bonâ fide*, and would therefore be bound in conscience to reject it, as if it had no existence; the effect of such evidence must be to convince the jury of the defendant's purity of mind, and must therefore depend upon the nature of the writing itself, and all the circumstances attending its publication.

If, upon reading the paper and considering the whole of the evidence, they have reason to think that the defendant did not believe it to be illegal, and did not publish it with the seditious purpose charged by the indictment, he is not guilty upon any principle or authority of law, and would have been acquitted even in the Star-Chamber; for it was held by that Court in Lambe's case, in the eighth year of King James I., as reported by Lord Coke, who then presided in it, that every one who should be convicted of a libel must be the writer or contriver, or a *malicious* publisher, *knowing* it to be a libel.

This case of Lambe being of too high authority to be opposed,

and too much in point to be passed over, Mr. Bower endeavours to avoid its force by giving it a new construction of his own : he says, that not knowing a writing to be a libel in the sense of that case, means not knowing the contents of the thing published, as by conveying papers sealed up, or having a sermon and a libel, and delivering one by mistake for the other. In such cases he says, *ignorantia facti excusat*, because the mind does not go with the act, *sed ignorantia legis non excusat*; and therefore if the party knows the contents of the paper which he publishes, his mind goes with the act of publication, though he does not find out anything criminal, and he is bound to abide by the legal consequences.

This is to make criminality depend upon the consequences of an act, and not upon the knowledge of its quality, which would involve lunatics and children in all the penalties of criminal law ; for whatever they do is attended with consciousness, though their understanding does not reach to the consciousness of offence.

The publication of a libel, not believing it to be one after having read it, is a much more favourable case than publishing it unread by mistake ; the one, nine times in ten, is a culpable negligence which is no excuse at all ; for a man cannot throw papers about the world without reading them, and afterwards say he did not know their contents were criminal : but if a man reads a paper, and not believing it to contain anything seditious, having collected nothing of that tendency himself, publishes it among his neighbours as an innocent and useful work, he cannot be convicted as a criminal publisher. How he is to convince the jury that his purpose was innocent, though the thing published be a libel, must depend upon circumstances ; and these circumstances he may, on the authority of all the cases, ancient and modern, lay before the jury in evidence ; because, if he can establish the innocence of his mind, he negatives the very gist of the indictment.

"In all crimes," says Lord Hale, in his "Pleas of the Crown," "the intention is the principal consideration : it is the mind that makes the taking of another's goods to be felony, or a bare trespass only : it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary ; but the same must be left to the attentive consideration of Judge and jury ; wherein the best rule is, *in dubiis*, rather to incline to acquittal than conviction."

In the same work he says : "By the statute of Philip and Mary, touching importation of coin counterfeit of foreign money, it must, to make it treason, be with the intent to utter and make payment of the same ; and the intent in this case may be tried and found by circumstances of FACT, by words, letters, and a thousand evidences besides the bare doing of the fact."

This principle is illustrated by frequent practice, where the intention is found by the jury as a fact in a special verdict. It occurred not above a year ago at East Grinstead, on an indictment

for burglary, before Mr. Justice Ashurst, where I was myself counsel for the prisoner. It was clear upon the evidence that he had broken into the house by force in the night; but I contended that it appeared from proof that he had broken and entered with an intent to rescue his goods, which had been seized that day by the officers of excise; which rescue, though a capital felony by modern statute, was but a trespass, *temp. Henry VIII.*, and consequently not a burglary.

Mr. Justice Ashurst saved this point of law, which the twelve judges afterwards determined for the prisoner; but, in order to create the point of law, it was necessary that the prisoner's intention should be ascertained as a fact; and for this purpose the learned Judge directed the jury to tell him with what intention they found that the prisoner broke and entered the house, which they did by answering, "To rescue his goods;" which verdict was recorded.

In the same manner, in the case of the King against Pierce, at the Old Bailey, the intention was found by the jury as a fact in the special verdict. The prisoner having hired a horse, and afterwards sold him, was indicted for felony; but the judges, doubting whether it was more than a fraud, unless he originally hired him intending to sell him, recommended it to the jury to find a special verdict, comprehending their judgment of his intention from the evidence. Here the quality of the act depended on the intention, which intention it was held to be the exclusive province of the jury to determine, before the judges could give the act any legal denomination.

My Lord, I am ashamed to have cited so many authorities to establish the first elements of the law, but it has been my fate to find them disputed. The whole mistake arises from confounding criminal with civil cases. If a printer's servant, without his master's consent or privity, inserts a slanderous article against me in his newspaper, I ought not in justice to indict him; and if I do, the jury *on such proof* should acquit him; but it is no defence to an action, for he is responsible to me *civiliter* for the damage which I have sustained from the newspaper, which is his property. Is there anything new in this principle? So far from it, that every student knows it as applicable to all other cases; but people are resolved, from some fatality or other, to distort every principle of law into nonsense, when they come to apply it to printing, as if none of the rules and maxims which regulate all the transactions of society had any reference to it.

If a man rising in his sleep walks into a china-shop, and breaks everything about him; his being asleep is a complete answer to an *indictment* for a trespass, but he must answer in an *action* for everything he has broken.

If the proprietor of the York coach, though asleep in his bed at

that city, has a drunken servant on the box at London, who drives over my leg and breaks it, he is responsible to me in damages for the accident ; but I cannot indict him as the criminal author of my misfortune. What distinction can be more obvious and simple ?

Let us only then extend these principles, which were never disputed in other criminal cases, to the crime of publishing a libel ; and let us at the same time allow to the jury, as our forefathers did before us, the same jurisdiction in that instance which we agree in rejoicing to allow them in all others, and the system of English law will be wise, harmonious, and complete.

My Lord, I have now finished my argument, having answered the several objections to my five original propositions, and established them by all the principles and authorities which appear to me to apply, or to be necessary for their support. In this process I have been unavoidably led into a length not more inconvenient to the Court than to myself, and have been obliged to question several judgments which had been before questioned and confirmed.

They, however, who may be disposed to censure me for the zeal which has animated me in this cause, will at least, I hope, have the candour to give me credit for the sincerity of my intentions. It is surely not my interest to stir opposition to the decided authorities of the Court in which I practise : with a seat here within the bar, at my time of life, and looking no further than myself, I should have been contented with the law as I found it, and have considered *how little* might be said with decency, rather than *how much* ; but feeling as I have ever done upon the subject, it was impossible I should act otherwise. It was the first command and counsel to my youth always to do what my conscience told me to be my duty, and to leave the consequences to God. I shall carry with me the memory, and, I hope, the practice, of this parental lesson to the grave : I have hitherto followed it, and have no reason to complain that the adherence to it has been even a temporal sacrifice ; I have found it, on the contrary, the road to prosperity and wealth, and shall point it out as such to my children. It is impossible in this country to hurt an honest man ; but even if it were possible, I should little deserve that title if I could, upon any principle, have consented to tamper or temporise with a question which involves in its determination and its consequences the liberty of the press ; and in that liberty, the very existence of every part of the public freedom.

SUBJECT OF THE TRIAL OF THE DEAN OF ST. ASAPH—
Continued.

BEFORE we go on to the final proceeding in this memorable cause, viz., the application to arrest the judgment, on the ground that the dialogue, as set forth in the indictment, did not contain the legal charge of a libel, it may be necessary to refer to the judgment delivered by Lord Mansfield on discharging the rule for a new trial—a judgment which was supported by the rest of the Court, and which confirmed throughout the whole doctrine of Mr. Justice Buller, as delivered upon the trial at Shrewsbury.

Further SUBJECT of the Trial of the DEAN OF ST. ASAPH.

THIS judgment may be considered as most fortunate for the public, since, in consequence of the very general interest taken in this cause, the public mind was at last fully ripe for the Libel Bill, which was soon after moved in the House of Commons by Mr. Fox, and seconded by Mr. Erskine.

The venerable and learned Chief-Justice undoubtedly established by his argument that the doctrine so soon afterwards condemned by the unanimous sense of the Legislature, when it passed the Libel Act, did not originate with himself, and that he only pronounced the law as he found it established by a train of *modern* decisions. But, supported as we now are by this judgment of Parliament, we must venture humbly to differ from so truly great an authority. The Libel Bill does not confer upon the jury any jurisdiction over the law inconsistent with the general principle of the constitution: but considering that the question of libel or no libel is frequently a question of fact rather than of law, and in many cases of fact and law almost inseparably blended together, it directs the Judge, as in other cases, to deliver his opinion to the jury upon the whole matter, including of course the question of libel or no libel, leaving them at the same time to found their verdicts upon such whole matter so brought before them as in all other criminal cases.*

* This Act, viz., 32 Geo. III. c. 60, runs thus:—

“Whereas doubts have arisen, whether, on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the King and the defendant or defendants, on the plea of not guilty pleaded, it be competent to the jury impannelled to try the same to give their verdict upon the whole matter in issue: Be it therefore declared and enacted, by, &c., that on every such trial the jury sworn to try the issue may give a general verdict of guilty or not guilty, upon the whole matter put to issue on such indictment or information: and shall not be required or directed by the Court or Judge, before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information.

“II. Provided always, that on every such trial, the Court or Judge before whom

The best answer to the apprehensions of the great and eminent Chief Justice regarding this course of proceeding, as then contended for by Mr. Erskine, and now established by the Libel Act, is the experience of seventeen years since that Act passed.

Before the statute, it was not difficult for the most abandoned and profligate libeller, guilty even of the most malignant slander upon private men, to connect his cause with the great privileges of the jury to protect innocence. Upon the Judge directing the jury, according to the old system, to find a verdict of guilty upon the fact of publication, shutting out altogether from their consideration the quality of the matter published, ingenious counsel used to seize that occasion to shelter a guilty individual under the mask of supporting great public rights; and juries, to show that they were not implicitly bound to find verdicts of guilty upon such evidence alone, were too successfully incited to find improper verdicts of acquittal. But since the passing of the Libel Act, when the whole matter has been brought under their consideration, when the quality of the matter published has been exposed when criminal, and defended when just or innocent, juries have listened to the Judge with attention and reverence, without being bound in their consciences (except in matters of abstract law) to follow his opinion; and instead of that uncertainty anticipated by Lord Mansfield, the administration of justice has been in general most satisfactory, and the public authority been vindicated against unjust attacks with much greater security, and more supported by public opinion, than when juries were instruments in the hands of the fixed magistrates; whilst at the same time public liberty has been secured by leaving the whole matter in all public libels to the judgment and consideration of the people. This reformed state of the law, as it regards the liberty of the press, is now so universally acknowledged, that the highest magistrates have declared in the House of Lords that no new laws are necessary either to support the State or protect the people.

The following argument in arrest of judgment is copied from a newspaper of the succeeding day:—

SPEECH in Arrest of Judgment.

MR. ERSKINE moved the Court to arrest the judgment in the case of the King against the Dean of St. Asaph upon two grounds: first, because even if the indictment sufficiently charged a libel, the verdict given by the jury was not sufficient to warrant the judg-

such indictment or information shall be tried, shall, according to their or his discretion, give their or his opinion or directions to the jury on the matter in issue between the King and the defendant or defendants, in like manner as in all other criminal cases.

“III. Provided also, that nothing herein shall extend, or be construed to extend, to prevent the jury finding a special verdict at their discretion, as in other criminal cases.

“IV. Provided also, that in case the jury find the defendant or defendants guilty, it shall and may be lawful for the said defendant or defendants to move an arrest of judgment on such ground and in such manner as by law he or they might have done before the passing of this Act; anything herein contained to the contrary notwithstanding.”

ment of the Court : and secondly, because the indictment did not contain any sufficient charge of a libel.

On the first objection, he again insisted on the right of the jury to find a general verdict on the merit of the writing charged on the record as a libel, notwithstanding the late judgment of the Court ;—and declared he should maintain it there, and everywhere else, as long as he lived, till the contrary should be settled by Act of Parliament. He then argued at considerable length, that the verdict, as given by the jury, was neither a general nor a special verdict, and complained of the alteration made upon the record without the authority of the Court.

He said, that the only reason for his insisting on his first objection at such length, was the importance of the principle which it involved, and the danger of the precedent it established ; although he was so certain of prevailing upon his second objection, that he considered it to be almost injustice to the Court to argue it. All who knew him in and out of the profession, could witness for him, that he had ever treated the idea of ultimately prevailing against him, upon such an indictment, to be perfectly ridiculous, and that his only object in all the trouble which he had given to the Court and to himself, in discussing the expediency of a new trial, was to resist a precedent, which he originally thought, and still continued to think, was illegal and unjustifiable :—the warfare was safe for his client, because he knew he could put an end to the prosecution any hour he pleased, by the objection he would now at last submit to the Court. It did not require the eye of a lawyer to see that even if the dialogue, instead of being innocent and meritorious, as he thought it, had been the foulest libel ever composed or published, the indictment was drawn in such a manner as to render judgment absolutely impossible. He said, that if he had been answering in his own person to the charge of publishing the dialogue complained of, he should have rejected with scorn the protection of a deficient indictment, would have boldly met the general question, and holding out defiance to the prosecutor, would have called upon his counsel to show what sentence, or word, though wrested with all the force ingenuity could apply to confound grammar and distort language, could be tortured into a violation of any one principle of the government :—but that, standing as counsel for another, he should not rest his defence even upon that strong foundation, but, after having maintained, as he had done at the trial, the innocence, or rather the merit of the dialogue, should entrench himself behind every objection which the forms of law enabled him to cast up.

The second objection was, that the indictment did not contain a sufficient charge of a libel of and concerning the King and his government :—that though the Court, by judging of libels of that nature, invested itself with a very large discretion ; yet it, nevertheless, was a discretion capable of being measured by very intelli-

gible rules of law, and within which rules he was persuaded the Court would strictly confine itself.

The first was, that the Court, in judging of the libellous or seditious nature of the paper in question, could only collect it from the indictment itself, and could supply nothing from any extrinsic source; and that, therefore, whatever circumstances were necessary to constitute the crime imputed, could not be supplied from any report of the evidence, nor from any inference from the verdict, but must be set out upon the record.

That rule was founded in great wisdom, and formed the boundary between the provinces of the jury and the Court; because, if any extrinsic circumstances, independent of the plain and ordinary meaning of the writing, were necessary to explain it, and point its criminal application, those facts must be put upon the record, for three reasons:—

First, That the charge might contain such a description of the crime, that the defendant might know what crime he was called upon to answer.

Secondly, That the application of the writing to those circumstances which constituted its criminality might be submitted as facts to the jury, who were the sole judges of any meaning which depended upon extrinsic proof.

Thirdly, That the Court might see such a definite crime that they might apply the punishment which the law inflicted.

He admitted, that wherever a writing was expressed in such clear and unambiguous words as in itself to constitute a libel, without the help of any explanation, all averments and innuendoes were unnecessary;—and, therefore, if it could be established that the pamphlet in question, if taken off the dusty shelves of a library, and looked at in the pure abstract, without attention to times or circumstances, without application to any facts not upon record, and without any light cast upon it from without, contained false, pernicious, illegal, and unconstitutional doctrines, in their tendency destructive of the Government, it would unquestionably be a libel. But if the terms of the writing were general, and the criminality imputed to it consisted in criminal allusions or references to matter, dehors the writing; then, although every man who reads such a writing might put the same construction on it; yet when it was the charge of a crime, and the party was liable to be punished for it, there wanted something more.

It ought to receive a juridical sense on the record, and, as the facts were to be decided by the jury, they only could decide whether the application of general expressions, or terms of reference, or allusions, as the case might be, to matters extrinsic, was just; nor could the general expressions themselves be extended, even by the jury, beyond their ordinary meaning, without an averment to give them cognisance of such extended import; nor could the Court,

even after a verdict of guilty, without such averment infer anything from the finding, but must pronounce strictly according to the just and grammatical sense of the language on the record. The Court, by declaring libel or not libel to be a question of law, must be supposed by that declaration not to assume any jurisdiction over facts, which was the province of the jury; but only to determine that, if the words of the writing, without averment, or with averments found to be true by the jury, contained criminal matter, it would be pronounced to be a libel according to the rules of law:—whereas, if the libel could only be inferred from its application to something extrinsic, however reasonable or probable such application might be, no court could possibly make it for want of the averment, without which the jury could have no jurisdiction over the facts extrinsic, by reference to which only the writing became criminal.

The next question was, how the application of the writing to any particular object was to be made upon the record: that was likewise settled in the case of the King and Horne.

“In all cases those facts which are descriptive of the charge must be introduced on the record by averments, in opposition to argument and inference.”

He said, that where facts were necessary in order to apply the matter of the libel to them, it was done introductorily. And where no new fact was necessary, but only ambiguous words were to be explained, it was done by the innuendo. But that the innuendo could not in itself enlarge the matter which it was employed to explain, without an antecedent introduction to refer to; but coupled with such introductory matter it could.

He said nothing remained but to apply those unquestionable principles to the present indictment; and that application divided itself into two heads:—

First, Whether the words of the dialogue, considered purely in the abstract, without being taken to be a seditious exhortation addressed to the people, in consequence of the present state of the nation, as connected with the subject matter of it, could possibly be considered to be a libel on the King and his Government.

Secondly, Whether, if such reference or allusion was necessary to render it criminal, there were sufficient averments on the record to enable the Court to make the criminal application of otherwise innocent doctrines consistently with the rules of law.

He said he should therefore take the dialogue, and show the Court that the whole scope and every particular part of it were meritorious.

Here Lord Mansfield said to Mr. Erskine, that having laid down his principles of judgment, the counsel for the prosecution should point out the parts they insisted on as sufficiently charged to be libellous, and that he would be heard in reply. On which Mr.

Bearcroft, Mr. Cowper, Mr. Leicester, and Mr. Bower, were all heard ; and endeavoured with great ingenuity to show that the dialogue was on the face of it a libel : but on Mr. Erskine's rising to reply, the Court said they would not give him any further trouble, as they were unanimously of opinion that the indictment was defective, and that the judgment should be arrested.

The Court went upon the principles of the case of the King against Horne, cited by Mr. Erskine, saying there were no averments to point the application of the paper as a libel on the King and his Government ; and the Dean is therefore finally discharged from the prosecution.

Mr Justice Willes threw out, that if the indictment had been properly drawn, it might have been supported. But Lord Mansfield and Mr. Justice Buller did not give any such opinion, confining themselves strictly to the question before the Court.

The judgment was accordingly arrested, and no new proceedings were ever had upon the subject against the Dean or the printer employed by him. His adversaries were, it is believed, sufficiently disposed to distress him ; but they were probably aware of the consequences of bringing the doctrines maintained by the Court of King's Bench into a second public examination.

CASE of the KING against JOHN STOCKDALE, tried in the Court of King's Bench, before LORD KENYON and a Special Jury, at Westminster, on the 9th of December 1789, upon an Information filed against him by the ATTORNEY-GENERAL, for a Libel on the HOUSE OF COMMONS.

THE SUBJECT.

THE trial of Mr. John Stockdale, of Piccadilly, is so immediately connected with the well-known impeachment of Mr. Hastings, the Governor-General of India, that very little preface is necessary for the illustration of Mr. Erskine's defence of him.

When the Commons of Great Britain ordered that impeachment, the articles were prepared by Mr. Edmund Burke, who had the lead in all the inquiries which led to it, and, instead of being drawn up in the usual dry method of legal accusation, were expanded into great length, and were characterised by that fervid and affecting language which distinguishes all the writings of that extraordinary person. The articles so prepared, instead of being confined to the records of the House of Commons, until they were carried up to the Lords for trial, were printed and sold in every shop in the kingdom, without question, or obstruction by the managers of the impeachment or the House of Commons, and undoubtedly, from the style and manner of their composition, made a very considerable impression against the accused.

To repel the effects of the articles, thus (according to the reasoning of Mr. Erskine) prematurely published, the Rev. Mr. Logan, one of the ministers of Leith in Scotland, a person eminent for learning, drew up a review of the articles of impeachment (which, as has been already stated, were then in general circulation), and carried them to Mr. Stockdale, an eminent and respectable bookseller in Piccadilly, who published them in the usual course of his business. Mr. Logan's review was composed with great accuracy and judgment, but undoubtedly with strong severity of observation against the accusation of Mr. Hastings; and having an immediate and very extensive sale, was complained of by Mr. Fox to the House of Commons, and upon the motion of that great and eminent person, then one of the managers of the impeachment, the House unanimously voted an address to the King, praying His Majesty to direct his Attorney-General to file an information against Mr. Stockdale, as the publisher of a libel upon the Commons House of Parliament, which was filed accordingly.

The publication having been proved, Mr. Erskine addressed the jury as follows: first saying, "I admit that the witness has proved that he bought this book at the shop of Mr. Stockdale—Mr. Stockdale himself being in the shop—from a young man who acted as his servant."

GENTLEMEN OF THE JURY,—Mr. Stockdale, who is brought as a criminal before you for the publication of this book, has, by employing ME as his advocate, reposed what must appear to many an extraordinary degree of confidence, since—although he well knows that I am personally connected in friendship with most of those whose conduct and opinions are principally arraigned by its author—he nevertheless commits to MY hands his defence and justification.

From a trust apparently so delicate and singular, vanity is but too apt to whisper an application to some fancied merit of one's own; but it is proper, for the honour of the English bar, that the world should know that such things happen to all of us daily, and of course; and that the defendant, without any knowledge of me, or any confidence that was personal, was only not afraid to follow up an accidental retainer, from the knowledge he has of the general character of the profession. Happy, indeed, is it for this country, that whatever interested divisions may characterise *other places*, of which I may have occasion to speak to-day, however the councils of the highest departments of the State may be occasionally distracted by personal considerations, they never enter these walls to disturb the administration of justice; whatever may be *our* public principles, or the private habits of *our* lives, they never cast even a shade across the path of our professional duties. If this be the characteristic even of the bar of an English court of justice, what sacred impartiality may not every man expect from its jurors and its Bench?

As, from the indulgence which the Court was yesterday pleased to give to my indisposition, this information was not proceeded on when you were attending to try it, it is probable you were not altogether inattentive to what passed at the trial of the other indictment, prosecuted also by the House of Commons; and therefore, without a restatement of the same principles, and a similar quotation of authorities to support them, I need only remind you of the law applicable to this subject, as it was then admitted by the Attorney-General, in concession to my propositions, and confirmed by the higher authority of the Court, viz. :—

First, that every information or indictment must contain such a description of the crime that the defendant may know what crime it is which he is called upon to answer.

Secondly, that the jury may appear to be warranted in their conclusion of guilty or not guilty.

And, lastly, that the Court may see such a precise and definite transgression upon the record, as to be able to apply the punishment which judicial discretion may dictate, or which positive law may inflict.

It was admitted also to follow, as a mere corollary from these propositions, that where an information charges a writing to be

composed or published OF AND CONCERNING THE COMMONS OF GREAT BRITAIN, with an intent to bring that body into scandal and disgrace with the public, the author cannot be brought within the scope of such a charge, unless the jury, on examination and comparison of the *whole matter* written or published, shall be satisfied that the particular passages charged as criminal, when explained by the context, and considered as part of *one entire work*, were meant and intended by the author to vilify the House of Commons *as a body*, and were written *of and concerning them* IN PARLIAMENT ASSEMBLED.

These principles being settled, we are now to see what the present information is.

It charges that the defendant "unlawfully, wickedly, and maliciously devising, contriving, and intending to asperse, scandalise, and vilify the Commons of Great Britain in Parliament assembled; and most wickedly and audaciously to represent their proceedings as corrupt and unjust, and to make it believed and thought as if the Commons of Great Britain in Parliament assembled were a most wicked, tyrannical, base, and corrupt set of persons, and to bring them into disgrace with the public;" the defendant published—*What?*—*Not* those latter ends of sentences which the Attorney-General has read from his brief, as if they had followed one another in order in this book; *not* those scraps and tails of passages which are patched together upon this record, and pronounced in one breath, as if they existed without intermediate matter in the same page, and without context anywhere. *No.* This is not the accusation, even mutilated as it is; for the information charges *that, with intention to vilify the House of Commons*, the defendant published the whole book, describing it on the record by its title, "A Review of the Principal Charges against Warren Hastings, Esq., late Governor-General of Bengal," *in which, amongst other things, the matter particularly selected is to be found.* Your inquiry, therefore, is not confined to whether the defendant published *those selected parts of it*; and whether, looking at them as they are distorted by the information, they carry in fair construction the sense and meaning which the innuendoes put upon them; but whether the author of the *entire work*—I say *THE AUTHOR*, since, if *HE* could defend himself, *THE PUBLISHER* unquestionably can,—whether *THE AUTHOR* wrote the volume which I hold in my hand, as a free, manly, *bona fide* disquisition of criminal charges against his fellow-citizens; or whether the long eloquent discussion of them, which fills so many pages, was a mere cloak and cover for the introduction of the supposed scandal imputed *to the selected passages*; the mind of the writer, all along, being intent on traducing the House of Commons, and not on *fairly* answering their charges against Mr. Hastings?

This, gentlemen, is the principal matter for your consideration;

and therefore, if, after you shall have taken the book itself into the chamber which will be provided for you, and shall have read the whole of it with impartial attention; if, after the performance of this duty, you can return here, and with clear consciences pronounce upon your oaths that the impression made upon you by these pages is, that the author wrote them with the wicked, seditious, and corrupt intentions charged by the information;—you have then my full permission to find the defendant guilty. But if, on the other hand, the general tenor of the composition shall impress you with respect for the author, and point him out to you as a man mistaken, perhaps himself, but not seeking to deceive others; if every line of the work shall present to you an intelligent, animated mind, glowing with a Christian compassion towards a fellow-man, whom he believed to be innocent, and with a patriot zeal for the liberty of his country, which he considered as wounded through the sides of an oppressed fellow-citizen; if *this* shall be the impression on your consciences and understandings, when you are called upon to deliver your verdict, then hear from me, that you not only work private injustice, but break up the press of England, and surrender her rights and liberties for ever, if you convict the defendant.

Gentlemen, to enable you to form a true judgment of the meaning of this book, and of the intention of its author, and to expose the miserable juggle that is played off in the information by the combination of sentences which, in the work itself, have no bearing upon one another, I will first give you the publication as it is charged upon the record and presented by the Attorney-General in opening the case for the Crown; and I will then, by reading the interjacent matter, which is studiously kept out of view, convince you of its true interpretation.

The information, beginning with the first page of the book, charges as a libel upon the House of Commons, the following sentence:—"The House of Commons has now given its final decision with regard to the merits and demerits of Mr. Hastings. The grand inquest of England have delivered their charges, and preferred their impeachment; their allegations are referred to proof; and from the appeal to the collective wisdom and justice of the nation in the supreme tribunal of the kingdom, the question comes to be determined, whether Mr. Hastings *be guilty or not guilty?*"

It is but fair, however, to admit that this first sentence, which the most ingenious malice cannot torture into a criminal construction, is charged by the information rather as introductory to what is made to follow it, than as libellous in itself; for the Attorney-General, from this introductory passage in the first page, goes on at a leap to page *thirteenth*, and reads—almost without a stop, as if it immediately followed the other—this sentence: "What credit can we give to multiplied and accumulated charges, when we find that they originate from misrepresentation and falsehood?"

From these two passages thus standing together, *without the intervenient matter, which occupies thirteen pages*, one would imagine that, instead of investigating the probability or improbability of the guilt imputed to Mr. Hastings; instead of carefully examining the charges of the Commons, and the defence of them which had been delivered before them, or which was preparing for the Lords, the author had immediately, and in a moment after stating the mere fact of the impeachment, decided that the act of the Commons originated from misrepresentation and falsehood.

Gentlemen, in the same manner a veil is cast over all that is written *in the next seven pages*; for knowing that the context would help to the true construction, not only of the passages charged before, but of those in the sequel of this information, the Attorney-General, aware that it would convince every man who read it that there was no intention in the author to calumniate the House of Commons, passes over, by another leap, *to page twenty*; and in the same manner, without drawing his breath, and as if it directly followed the two former sentences *in the first and thirteenth pages*, reads from page twentieth, "An impeachment of error in judgment with regard to the quantum of a fine, and for an intention that never was executed, and never known to the offending party, characterises a tribunal of inquisition rather than a court of Parliament."

From this passage, by another vault, he leaps over *one-and-thirty pages more, to page fifty-one*; where he reads the following sentence, which he mainly relies on, and upon which I shall by and by trouble you with some observations: "Thirteen of them passed in the House of Commons not only without investigation, but without being read; and the votes were given without inquiry, argument, or conviction. A majority had determined to impeach; opposite parties met each other, and '*jostled in the dark*,' to perplex the political drama, and bring the hero to a tragic catastrophe."

From thence, deriving new vigour from every exertion, he makes his last grand stride *over forty-four pages more*, almost to the end of the book, charging a sentence *in the ninety-fifth page*.

So that out of a volume of *one hundred and ten pages*, the defendant is only charged with a few scattered fragments of sentences, picked out of *three or four*. Out of a work, consisting of about *two thousand five hundred and thirty lines*, of manly, spirited eloquence, only *forty or fifty lines* are culled from different parts of it, and artfully put together, so as to rear up a libel, out of a false context, by a supposed connection of sentences with one another, which are not only entirely independent, but which, when compared with their antecedents, bear a totally different construction. In this manner, the greatest works upon government, the most excellent books of science, the Sacred Scriptures themselves, might be dis-

torted into libels ; by forsaking the general context, and hanging a meaning upon selected parts : thus, as in the text put by Algernon Sidney, "The fool has said in his heart, There is no God ;" the Attorney-General, on the principle of the present proceeding against this pamphlet, might indict the publisher of the Bible for blasphemously denying the existence of heaven, in printing, "*There is no God.*" For these words alone, without the context, would be selected by the information, and the Bible, like this book, would be *underscored* to meet it. Nor could the defendant in such a case, have any possible defence, unless the jury were permitted to see, BY THE BOOK ITSELF, that the verse, instead of denying the existence of the Divinity, only imputed that imagination to a fool.

Gentlemen, having now gone through the Attorney-General's reading, the book shall presently come forward and speak for itself. But before I can venture to lay it before you, it is proper to call your attention to how matters stood at the time of its publication, without which the author's meaning and intention cannot possibly be understood.

The Commons of Great Britain, in Parliament assembled, had accused Mr. Hastings, as Governor-General of Bengal, of high crimes and misdemeanours ; and their jurisdiction for that high purpose of national justice was unquestionably competent. But it is proper you should know the nature of this inquisitorial capacity. The Commons, in voting an impeachment, may be compared to a grand jury, finding a bill of indictment for the Crown : neither the one nor the other can be supposed to proceed but upon the matter which is brought before them ; neither of them can find guilt without accusation, nor the truth of accusation without evidence. When, therefore, we speak of the *accuser*, or *accusers*, of a person indicted for any crime, although the grand jury are the accusers *in form*, by giving effect to the accusation, yet in common parlance we do not consider *them* as the responsible authors of the prosecution. If I were to write of a most wicked indictment, found against an innocent man, which was preparing for trial, nobody who read it would conceive I meant to stigmatise the grand jury that found the bill ; but it would be inquired immediately who was the PROSECUTOR, and who were the WITNESSES on the back of it ? In the same manner I mean to contend, that if this book is read with only common attention, the whole scope of it will be discovered to be this : That, in the opinion of the author, Mr. Hastings had been accused of maladministration in India, from the heat and spleen of political divisions in Parliament, and not from any zeal for national honour or justice ; that the impeachment did not originate from Government, but from a faction banded against it, which, by misrepresentation and violence, had fastened it on an unwilling House of Commons : that, prepossessed with this sentiment (which, however unfounded, makes no part of the present

business, since the publisher is not called before you for defaming individual members of the Commons, but for a contempt of the Commons as a body), the author pursues the charges, article by article ; enters into a warm and animated vindication of Mr. Hastings, by regular answers to each of them ; and that, as far as the mind and soul of a man can be visible, I might almost say embodied, in his writings, his intention throughout the whole volume appears to have been to charge with injustice the *private accusers* of Mr. Hastings, and not the House of Commons as a body : which undoubtedly rather reluctantly gave way to, than heartily adopted, the impeachment. This will be found to be the palpable scope of the book ; and no man who can read English, and who, at the same time, will have the candour and common sense to take up his impressions from what is written in it, instead of bringing his own along with him to the reading of it, can possibly understand it otherwise.

But it may be said, that admitting this to be the scope and design of the author, what right had he to canvass the merits of an accusation upon the records of the Commons, more especially while it was in the course of legal procedure ? This, I confess, might have been a serious question ; but the Commons, as *prosecutors of this information*, seem to have waived, or forfeited, their right to ask it. Before they sent the Attorney-General into this place, to publish the publication of *answers* to their charges, they should have recollected that their own want of circumspection in the maintenance of their privileges, and in the protection of persons accused before them, had given to the public the *charges themselves*, which should have been confined to *their own journals*. The course and practice of Parliament might warrant the printing of them for the use of their own members ; but there the publication should have stopped, and all further progress been resisted by authority. If they were resolved to consider *answers to their charges* as a contempt of their privileges, and to punish the publication of them by such severe prosecutions, it would have well become them to have begun first with those printers who, by publishing *the charges themselves* throughout the whole kingdom, or rather throughout the whole civilised world, were anticipating the passions and judgments of the public against a subject of England upon his trial, so as to make the publication of *answers* to them not merely a privilege, but a debt and duty to humanity and justice. The Commons of Great Britain claimed and exercised the privileges of questioning the innocence of Mr. Hastings by their impeachment ; but as, however questioned, it was still to be presumed and protected, until guilt was established by a judgment, he whom they had accused had an equal claim upon their justice, to guard him from prejudice and misrepresentation until the hour of trial.

Had the Commons, therefore, by the exercise of their high, necessary, and legal privileges, kept the public aloof from all canvass of their proceedings, by an early punishment of printers who, without reserve or secrecy, had sent out *the charges* into the world from a thousand presses in every form of publication, they would have then stood upon ground to-day from whence no argument of policy or justice could have removed them; because nothing can be more incompatible with either than appeals to the many upon subjects of judicature, which by common consent a few are appointed to determine, and which must be determined by facts and principles which the multitude have neither leisure nor knowledge to investigate. But then, let it be remembered, that it is for those who have the authority to accuse and punish to set the example of, and to enforce this reserve, which is so necessary for the ends of justice. Courts of law, therefore, in England, never endure the publication of *their* records; and a prosecutor of an indictment would be attacked for such a publication; and upon the same principle, a defendant would be punished for anticipating the justice of his country by the publication of his defence, the public being no party to it until the tribunal appointed for its determination be open for its decision.

Gentlemen, you have a right to take judicial notice of these matters, without the proof of them by witnesses; for jurors may not only, without evidence, found their verdicts on facts that are notorious, but upon what they know privately themselves, after revealing it upon oath to one another; and, therefore, you are always to remember that this book was written when the *charges* against Mr. Hastings, to which it is an answer, were to the knowledge of the Commons (for we cannot presume our watchmen to have been asleep), publicly hawked about in every pamphlet, magazine, and newspaper in the kingdom. You well know with what a curious appetite these charges were devoured by the whole public, interesting as they were, not only from their importance, but from the merit of their composition; certainly not so intended by the honourable and excellent composer to oppress the accused, but because the most common subjects swell into eloquence under the touch of his sublime genius. Thus, by the remissness of the Commons, *who are now the prosecutors of this information*, a subject of England, who was not even charged with contumacious resistance to authority, much less a proclaimed outlaw, and therefore fully entitled to every protection which the customs and statutes of the kingdom hold out for the protection of British liberty, saw himself pierced with the arrows of thousands and ten thousands of libels.

Gentlemen, before I venture to lay the book before you, it must be yet further remembered (for the fact is equally notorious), that under these inauspicious circumstances the trial of Mr. Hastings at the bar of the Lords had actually commenced long before its publication.

There the most august and striking spectacle was daily exhibited which the world ever witnessed. A vast stage of justice was erected, awful from its high authority, splendid from its illustrious dignity, venerable from the learning and wisdom of its judges, captivating and affecting from the mighty concourse of all ranks and conditions which daily flocked into it, as into a theatre of pleasure; there, when the whole public mind was at once awed and softened to the impression of every human affection, there appeared, day after day, one after another, men of the most powerful and exalted talents, eclipsing by their accusing eloquence the most boasted harangues of antiquity; rousing the pride of national resentment by the boldest invectives against broken faith and violated treaties, and shaking the bosom with alternate pity and horror by the most glowing pictures of insulted nature and humanity; ever animated and energetic, from the love of fame, which is the inherent passion of genius; firm and indefatigable, from a strong prepossession of the justice of their cause.

Gentlemen, when the author sat down to write the book now before you, all this terrible, unceasing, exhaustless artillery of warm zeal, matchless vigour of understanding, consuming and devouring eloquence, united with the highest dignity, was daily, and without prospect of conclusion, pouring forth upon one private unprotected man, who was bound to hear it, in the face of the whole people of England, with reverential submission and silence. I do not complain of this as I did of the publication of the charges, because it is what the law allowed and sanctioned in the course of a public trial: but when it is remembered that we are not angels, but weak, fallible men, and that even the noble judges of that high tribunal are clothed beneath their ermines with the common infirmities of man's nature, it will bring us all to a proper temper for considering the book itself, which will in a few moments be laid before you. But first, let me once more remind you, that it was under all these circumstances, and amidst the blaze of passion and prejudice, which the scene I have been endeavouring faintly to describe to you might be supposed likely to produce, that the author, whose name I will now give you, sat down to compose the book which is prosecuted to-day as a libel.

The history of it is very short and natural.

The Rev. Mr. Logan, minister of the gospel at Leith, in Scotland, a clergyman of the purest morals, and, as you will see by and by, of very superior talents, well acquainted with the human character, and knowing the difficulty of bringing back public opinion after it is settled on any subject, took a warm, unbought, unsolicited interest in the situation of Mr. Hastings, and determined, if possible, to arrest and suspend the public judgment concerning him. He felt for the situation of a fellow-citizen, exposed to a trial which, whether right or wrong, is undoubtedly a severe one,—a trial certainly not

confined to a few criminal acts like those we are accustomed to, but comprehending the transactions of a whole life, and the complicated policies of numerous and distant nations,—a trial which had neither visible limits to its duration, bounds to its expense, nor circumscribed compass for the grasp of memory or understanding; a trial which had therefore broke loose from the common form of decision, and had become the universal topic of discussion in the world, superseding not only every other grave pursuit, but every fashionable dissipation.

Gentlemen, the question you have therefore to try upon all this matter is extremely simple. It is neither more nor less than this: At a time when the charges against Mr. Hastings were, by the implied consent of the Commons, in every hand and on every table; when by their managers the lightning of eloquence was incessantly consuming him, and flashing in the eyes of the public; when every man was with perfect impunity saying, and writing, and publishing just what he pleased of the supposed plunderer and devastator of nations; would it have been criminal in *Mr. Hastings himself* to have reminded the public that he was a native of this free land, entitled to the common protection of her justice, and that he had a defence in his turn to offer to them, the outlines of which he implored them in the meantime to receive, as an antidote to the unlimited and unpunished poison in circulation against him? This is, without colour or exaggeration, the true question you are to decide; because I assert, without the hazard of contradiction, that if Mr. Hastings himself could have stood justified or excused in your eyes for publishing this volume in his own defence, the author, if he wrote it *bonâ fide* to defend him, must stand equally excused and justified; and if the author be justified, the publisher cannot be criminal, unless you had evidence that it was published by him with a different spirit and intention from those in which it was written. The question therefore is correctly what I just now stated it to be: Could *Mr. Hastings* have been condemned to infamy for writing this book?

Gentlemen, I tremble with indignation to be driven to put such a question in England. Shall it be endured that a subject of this country (instead of being arraigned and tried for some single act in her ordinary courts, where the accusation, as soon at least as it is made public, is followed within a few hours by the decision) may be impeached by the Commons for the transactions of twenty years,—that the accusation shall spread as wide as the region of letters,—that the accused shall stand, day after day, and year after year, as a spectacle before the public, which shall be kept in a perpetual state of inflammation against him; yet that he shall not, without the severest penalties, be permitted to submit anything to the judgment of mankind in his defence? If this be law (which it is for you to-day to decide), such a man has NO TRIAL; that great

hall, built by our fathers for English justice, is no longer a court, but an altar; and an Englishman, instead of being judged in it by GOD AND HIS COUNTRY, IS A VICTIM AND A SACRIFICE.

You will carefully remember that I am not presuming to question either the right or the duty of the Commons of Great Britain to impeach: neither am I arraigning the propriety of their selecting, as they have done, the most extraordinary persons for ability which the age has produced to manage their impeachment; much less am I censuring the managers themselves, charged with the conduct of it before the Lords, who were undoubtedly bound, by their duty to the House and to the public, to expatiate upon the crimes of the person whom they had accused. None of these points are questioned by me, nor are in this place questionable. I only desire to have it decided whether, if the Commons, when national expediency happens to call in their judgment for an impeachment, shall, *instead of keeping it on their own records, and carrying it with due solemnity to the Peers for trial*, permit it without censure and punishment to be sold like a common newspaper in the shop of my client, so crowded with their own members that no plain man, without privilege of Parliament, can hope even for a sight of the fire in a winter's day, every man buying it, reading it, and commenting upon it; the gentleman himself who is the object of it, or his friend in his absence, may not, without stepping beyond the bounds of English freedom, put a copy of what is thus published into his pocket, and send back to the very same shop for publication a *bonâ fide*, rational, able answer to it, in order that the bane and antidote may circulate together, and the public be kept straight till the day of decision. If you think, gentlemen, that this common duty of self-preservation in the accused himself, which nature writes as a law upon the hearts of even savages and brutes, is nevertheless too high a privilege to be enjoyed by an impeached and suffering Englishman; or if you think it beyond the offices of humanity and justice, when brought home to the hand of a brother or a friend, you will say so by your verdict of GUILTY—the decision will then be *yours*, and the consolation *mine* that I laboured to avert it. A very small part of the misery which will follow from it is likely to light upon *me*; the rest will be divided amongst *yourselves and your children*.

Gentlemen, I observe plainly, and with infinite satisfaction, that you are shocked and offended at my even supposing it possible you should pronounce such a detestable judgment; and that you only require of me to make out to your satisfaction (*as I promised*) that the real scope and object of this book is a *bonâ fide* defence of Mr. Hastings, and not a *cloak and cover for scandal on the House of Commons*. I engage to do this, and I engage for nothing more. I shall make an open, manly defence; I mean to torture no expressions from their natural constructions, to dispute no innuendoes

on the record, should any of them have a fair application ; nor to conceal from your notice any unguarded, intemperate expressions, which may perhaps be found to chequer the vigorous and animated career of the work. Such a conduct might, by accident, shelter the defendant ; but it would be the surrender of the very principle on which alone the liberty of the English press can stand ; and I shall never defend any man from a temporary imprisonment by the permanent loss of my own liberty and the ruin of my country. I mean therefore to submit to you, that though you should find a few lines in page thirteen or twenty-one, a few more in page fifty-one, and some others in other places, containing expressions bearing on the House of Commons, even as a body, which, if written as independent paragraphs by themselves, would be indefensible libels, yet that you have a right to pass them over in judgment, provided the substance clearly appears to be a *bonâ fide* conclusion, arising from the honest investigation of a subject which it was lawful to investigate, and the questionable expressions the visible effusion of a zealous temper, engaged in an honourable and legal pursuit. After this preparation, I am not afraid to lay the book in its genuine state before you.

The pamphlet begins thus : "The House of Commons has now given its final decision with regard to the merits and demerits of Mr. Hastings. The grand inquest of England have delivered their charges and preferred their impeachment ; their allegations are referred to proof ; and from the appeal to the collective wisdom and justice of the nation in the supreme tribunal of the kingdom, the question comes to be determined whether Mr. Hastings *be guilty or not guilty ?*"

Now, if immediately after what I have just read to you (which is the first part charged by the information), the author had said, "Will accusations, built on such a baseless fabric, prepossess the public in favour of the impeachment ? What credit can we give to multiplied and accumulated charges when we find that they originate from misrepresentation and falsehood ?"—every man would have been justified in pronouncing that he was attacking the House of Commons, because the groundless accusations mentioned in the second sentence could have no reference but to the House itself, mentioned by name in the first and only sentence which preceded it.

But, gentlemen, to your astonishment, I will now read *what intervenes between these two passages* ; from which you will see, beyond a possibility of doubt, that the author never meant to calumniate the House of Commons, but to say that the accusation of Mr. Hastings before the *whole* House grew out of a *Committee of Secrecy* established some years before, and was afterwards brought forward by the spleen of private enemies and a faction in the Government. This will appear, not only from the grammatical

construction of the words, but, from what is better than words, from the meaning which a person writing as a friend of Mr. Hastings must be supposed to have intended to convey. Why should such a friend attack the House of Commons? Will any man gravely tell me that the House of Commons, *as a body*, ever wished to impeach Mr. Hastings? Do we not all know that they constantly hung back from it, and hardly knew where they were or what to do when they found themselves entangled with it? My learned friend the Attorney-General is a member of this assembly; perhaps he may tell you by and by what ~~he~~ he thought of it, and whether he ever marked any disposition in the majority of the Commons hostile to Mr. Hastings. But why should I distress my friend by the question?—the fact is sufficiently notorious; and what I am going to read from the book itself (which is left out in the information) is too plain for controversy.

“Whatever may be the event of the impeachment, the proper exercise of such power is a valuable privilege of the British constitution, a formidable guardian of the public liberty and the dignity of the nation. *The only danger is, that from the influence of faction, and the awe which is annexed to great names, they may be prompted to determine before they inquire, and to pronounce judgment without examination.*”

Here is the clue to the whole pamphlet. The author trusts to and respects the House of Commons, but is afraid their mature and just examination may be disturbed by *faction*. Now, does he mean Government by *faction*? Does he mean the majority of the Commons by *faction*? Will the House, which is the prosecutor here, sanction that application of the phrase; or will the Attorney-General admit the majority to be the true innuendo of *faction*? I wish he would: I should then have gained something at least by this extraordinary debate. But I have no expectation of the sort. Such a concession would be too great a sacrifice to any prosecution at a time when everything is considered as *faction* that disturbs the repose of the Minister in Parliament. But indeed, gentlemen, some things are too plain for argument. The author certainly means *my* friends, who, whatever qualifications may belong to them, must be contented with the appellation of *faction* while they oppose the Minister in the House of Commons; but the House, having given this meaning to the phrase of *faction* for its own purposes, cannot in decency change the interpretation in order to convict my client. I take that to be beyond the privilege of Parliament.

The same bearing upon individual members of the Commons, and not on the Commons *as a body*, is obvious throughout. Thus, after saying, in page 9, that the East India Company had thanked Mr. Hastings for his meritorious services (which is unquestionably true), he adds, “that mankind would abide by their deliberate decision, rather than by the intemperate assertion of a *committee*.”

This he writes after the impeachment was found by the Commons at large; but he takes no account of their proceedings, imputing the whole to the original committee, *i.e.*, the *Committee of Secrecy*; so called, I suppose, from their being the authors of twenty volumes in folio which will remain a secret to all posterity, as nobody will ever read them. The same construction is equally plain from what immediately follows:—"The report of the *Committee of Secrecy* also states, that the happiness of the native inhabitants of India has been deeply affected, their confidence in English faith and lenity shaken and impaired, and the character of this nation wantonly and wickedly degraded."

Here again you are grossly misled by the omission of near *twenty-one pages*. For the author, though he is here speaking of this Committee *by name*, which brought forward the charges to the notice of the House, and which he continues to do onward to the next select paragraph; yet, by arbitrarily sinking the whole context, he is taken to be speaking of the House as a *body*, when, in the passage next charged by the information, he reproaches the *accusers* of Mr. Hastings; although, so far is he from considering them as the House of Commons, that, in the very same page, he speaks of the articles as the charges, not even of the Committee, but of Mr. Burke alone, the most active and intelligent member of that body, having been circulated in India by a relation of that gentleman:—"The charges of *Mr. Burke* have been carried to Calcutta, and carefully circulated in India."

Now, if we were considering these passages of the work as calumniating a body of gentlemen, many of whom I must be supposed highly to respect, or as reflecting upon my worthy friend whose name I have mentioned, it would give rise to a totally different inquiry, which it is neither my duty nor yours to agitate; but surely, the more that consideration obtrudes itself upon us, the more clearly it demonstrates that the author's whole direction was against the individual accusers of Mr. Hastings, and not against the House of Commons, which merely trusted to the matter they had collected.

Although, from a caution which my situation dictates as representing another, I have thought it my duty thus to point out to you the real intention of the author, as it appears by the fair construction of the work, yet I protest that, in my own apprehension, it is very immaterial whether he speaks of the *Committee* or of the *House*, provided you shall think the whole volume a *bonâ fide* defence of Mr. Hastings. This is the great point I am, by all my observations, endeavouring to establish, and which I think no man who reads the following short passages can doubt. Very intelligent persons have indeed considered them, if founded in facts, to render every other amplification unnecessary. The first of them is as follows:—"It was known at that time that Mr. Hastings had

not only descended from a public to a private station, but that he was persecuted with accusations and impeachments. But none of these *suffering millions* have sent their complaints to this country; not a sigh nor a groan has been wafted from India to Britain. On the contrary, testimonies the most honourable to the character and merit of Mr. Hastings have been transmitted by those very princes whom he has been supposed to have loaded with the deepest injuries."

Here, gentlemen, we must be permitted to pause together a little; for in examining whether these pages were written as an honest answer to the charges of the Commons, or as a prostituted defence of a notorious criminal, whom the writer believed to be guilty, *truth becomes material at every step*. For if in *any instance* he be detected of a *wilful* misrepresentation, he is no longer an object of your attention.

Will the Attorney-General proceed, then, to detect the hypocrisy of our author by giving us some details of the proofs by which these personal enormities have been established, and which the writer must be supposed to have been acquainted with? I ask this as the defender of *Mr. Stockdale*, not of Mr. Hastings, with whom I have no concern. I am sorry indeed to be so often obliged to repeat this protest; but I really feel myself embarrassed with those repeated coincidences of defence, which thicken on me as I advance, and which were, no doubt, overlooked by the Commons when they directed this interlocutory inquiry into his conduct. I ask then, *as counsel for Mr. Stockdale*, whether when a great state criminal is brought for justice, at an immense expense to the public, accused of the most oppressive cruelties, and charged with the robbery of princes and the destruction of nations, it is not open to any one to ask, Who are his accusers? What are the sources and the authorities of these shocking complaints? Where are the ambassadors or memorials of those princes whose revenues he has plundered? Where are the witnesses for those unhappy men in whose persons the rights of humanity have been violated? How deeply buried is the blood of the innocent that it does not rise up in retributive judgment to confound the guilty! These surely are questions which, when a fellow-citizen is upon a long, painful, and expensive trial, humanity has a right to propose; which the plain sense of the most unlettered man may be expected to dictate; and which all history must provoke from the more enlightened. When CICERO impeached VERRER before the great tribunal of Rome of similar cruelties and depredations in *her* provinces, the Roman people were not left to such inquiries. ALL SICILY surrounded the Forum, demanding justice upon her plunderer and spoiler, with tears and imprecations. It was not by the eloquence of the *orator*, but by the cries and tears of the miserable, that Cicero prevailed in that illustrious cause. VERRER fled from the oaths of his accusers

and their witnesses, and not from the voice of TULLY. To preserve the fame of his eloquence, he composed his five celebrated speeches, but they were never delivered against the criminal, because he had fled from the city, appalled with the sight of the persecuted and the oppressed. It may be said that the cases of Sicily and India are widely different. Perhaps they may be. Whether they are or not is foreign to my purpose. I am not bound to deny the possibility of answers to such questions; I am only vindicating *the right to ask them*.

Gentlemen, the author, in the other passage which I marked out to your attention, goes on thus:—"Sir John Macpherson and Lord Cornwallis, his successors in office, have given the same voluntary tribute of approbation to his measures as Governor-General of India. A letter from the former, dated the 10th of August 1786, gives the following account of our dominions in Asia:—'The native inhabitants of this kingdom are the happiest and best protected subjects in India. Our native allies and tributaries confide in our protection; the country powers are aspiring to the friendship of the English; and from the King of Tidore, towards New Guinea, to Timur Shaw, on the banks of the Indus, there is not a State that has not *lately* given us proofs of confidence and respect.'"

Still pursuing the same test of sincerity, let us examine this defensive allegation.

Will the Attorney-General say that he does not believe such a letter from Lord Cornwallis ever existed? No; for he knows that it is as authentic as any document from India upon the table of the House of Commons. What then is the letter? The native inhabitants of this kingdom, says Lord Cornwallis (writing from the very spot), are the happiest and best protected subjects in India, &c. &c. &c. The inhabitants of *this kingdom*!—Of *what kingdom*? Of the very kingdom which Mr. Hastings had just returned from governing for thirteen years, and for the misgovernment and desolation of which he stands every day as a criminal, or rather as a spectacle before us. This is matter for serious reflection, and fully entitles the author to put the question which immediately follows—"Does this authentic account of the administration of Mr. Hastings, and of the state of India, correspond with the gloomy picture of despotism and despair drawn by the *Committee of Secrecy*?"

Had that picture been even drawn by the House of Commons itself, he would have been fully justified in asking this question. But you observe it has no bearing on it. The last words not only entirely destroy that interpretation, but also the meaning of the very next passage which is selected by the information as criminal, *viz.*, "What credit can we give to multiplied and accumulated charges, when we find that they originate from misrepresentation and falsehood?"

This passage, which is charged as a libel on the Commons, when thus compared with its immediate antecedent, can bear but one construction. It is impossible to contend that it charges misrepresentation on the House, that found the impeachment, but upon the *Committee of Secrecy* just before adverted to, who were supposed to have selected the matter, and brought it before the whole House for judgment.

I do not mean, as I have often told you, to vindicate any calumny on that honourable committee, or upon any individual of it, any more than upon the Commons at large; BUT THE DEFENDANT IS NOT CHARGED BY THIS INFORMATION WITH ANY SUCH OFFENCES.

Let me here pause once more to ask you, whether the book, in its genuine state, as far as we have advanced in it, makes the same impression on your minds now as when it was first read to you in detached passages? and whether, if I were to tear off the first part of it which I hold in my hand, and give it to you as an entire work, the first and last passages which have been selected as libels on the Commons would now appear to be so when blended with the interjacent parts? I do not ask your answer. I shall have it in your verdict. The question is only put to direct your attention, in pursuing the remainder of the volume, to this main point—IS IT AN HONEST, SERIOUS DEFENCE? For this purpose, and as an example for all others, I will read the author's entire answer to the first article of charge concerning Cheit Sing, the Zemindar of Benares, and leave it to your impartial judgments to determine whether it be a mere cloak and cover for the slander imputed by the information to the concluding sentence of it, which is the only part attacked? or whether, on the contrary, that conclusion itself, when embodied with what goes before it, does not stand explained and justified?

"The first article of impeachment," continues our author, "is concerning Cheit Sing, the Zemindar of Benares. Bulwant Sing, the father of this rajah, was merely an *aumil*, or farmer and collector of the revenues for Sujah ul Dowlah, Nabob of Oude, and Vizir of the Mogul Empire. When, on the decease of his father, Cheit Sing was confirmed in the office of collector for the Vizir, he paid £200,000 as a gift or nuzzeranah, and an additional rent of £30,000 per annum.

"As the father was no more than an *aumil*, the son succeeded only to his rights and pretensions. But by a sunnud granted to him by the Nabob Sujah Dowlah in September 1773, through the influence of Mr. Hastings, he acquired a legal title to property in the land, and was raised from the office of *aumil* to the rank of zemindar. About four years after the death of Bulwant Sing, the Governor-General and Council of Bengal obtained the sovereignty paramount of the province of Benares. On the transfer of this sovereignty the Governor and Council proposed a new grant to Cheit

Sing, confirming his former privileges, and conferring upon him the addition of the sovereign rights of the Mint, and the powers of criminal justice with regard to life and death. He was then recognised by the Company as one of their zemindars; a tributary subject, or feudatory vassal, of the British Empire in Indostan. The feudal system, which was formerly supposed to be peculiar to our Gothic ancestors, has always prevailed in the East. In every description of that form of government, notwithstanding accidental variations, there are two associations expressed or understood; one for internal security, the other for external defence. The king or nabob confers protection on the feudatory baron as tributary prince, on condition of an annual revenue in the time of peace, and of military service, partly commutable for money, in the time of war. The feudal incidents in the Middle Ages in Europe, the fine paid to the superior on *marriage, wardship, relief, &c.*, correspond to the annual tribute in Asia. Military service in war, and extraordinary aids in the event of extraordinary emergencies, were common to both.*

"When the Governor-General of Bengal, in 1778, made an extraordinary demand on the Zemindar of Benares for five lacks of rupees, the British Empire, in that part of the world, was surrounded with enemies which threatened its destruction. In 1779, a general confederacy was formed among the great powers of Indostan for the expulsion of the English from their Asiatic dominions. At this crisis the expectation of a French armament augmented the general calamities of the country. Mr. Hastings is charged by the committee with making his first demand under the false pretence that hostilities had commenced with France. Such an insidious attempt to pervert a meritorious action into a crime is new—even in the history of impeachments. On the 7th of July 1778, Mr. Hastings received private intelligence from an English merchant at Cairo, that war had been declared by Great Britain on the 23rd of March,

* "Notwithstanding this analogy, the powers and privileges of a zemindar have never been so well ascertained and defined as those of a baron in the feudal ages. Though the office has usually descended to the posterity of the zemindar, under the ceremony of fine and investiture, a material decrease in the cultivation, or decline in the population of the district, has sometimes been considered as a ground to dispossess him. When zemindars have failed in their engagements to the State, though not to the extent to justify expulsion, supervisors have been often sent into the zemindaries, who have farmed out the lands, and exercised authority under the Duannee laws, independent of the zemindar. These circumstances strongly mark their *dependence* on the nabob. About a year after the departure of Mr. Hastings from India, the question concerning the rights of zemindars was agitated at great length in Calcutta; and after the fullest and most accurate investigation, the Governor-General and Council gave it as their deliberate opinion to the Court of Directors, that the property of the soil is not in the zemindar, but in the government; and that a zemindar is merely an officer of government appointed to collect its revenues. Cheit Sing understood himself to stand in this predicament. 'I am,' said he on various occasions, 'the servant of the cirar (government), and ready to obey your orders.' The name and office of zemindar is not of Hindoo, but Mogul institution."

and by France on the 30th of April. Upon this intelligence, considered as authentic, it was determined to attack all the French settlements in India. The information was afterwards found to be premature; but in the latter end of August a secret despatch was received from England, authorising and appointing Mr. Hastings to take the measures which he had already adopted in the preceding month. The Directors and the Board of Control have expressed their approbation of this transaction, by liberally rewarding Mr. Baldwyn, the merchant, for sending the earliest intelligence he could procure to Bengal. It was *two days* after Mr. Hastings' information of the French war, that he formed the resolution of exacting the five lacks of rupees from Cheit Sing, and would have made *similar exactions* from all the dependencies of the Company in India, had they been in the same circumstances. The fact is, that the great zemindars of Bengal pay as much to Government as their lands can afford. Cheit Sing's collections were above fifty lacks, and his rent not twenty-four.

"The right of calling for extraordinary aids and military service in times of danger, being universally established in India, as it was formerly in Europe during the feudal times, the subsequent conduct of Mr. Hastings is explained and vindicated. The Governor-General and Council of Bengal having made a demand upon a tributary zemindar for three successive years, and that demand having been resisted by their vassal, they are justified in his punishment. The necessities of the Company, in consequence of the critical situation of their affairs in 1781, calling for a high fine; the ability of the zemindar, who possessed near two crores of rupees in money and jewels, to pay the sum required; his backwardness to comply with the demands of his superiors; his disaffection to the English interest, and desire of revolt, which even then began to appear, and were afterwards conspicuous, fully justify Mr. Hastings in every subsequent step of his conduct. In the whole of his proceedings it is manifest that he had not early formed a design hostile to the zemindar, but was regulated by events which he could neither foresee nor control. When the necessary measures which he had taken for supporting the authority of the Company, by punishing a refractory vassal, were thwarted and defeated by the barbarous massacre of the British troops, and the rebellion of Cheit Sing, the appeal was made to arms, an unavoidable revolution took place in Benares, and the zemindar became the author of his own destruction."

Here follows the concluding passage, which is arraigned by the information:—

"The decision of the House of Commons on this charge against Mr. Hastings is one of the most singular to be met with in the annals of Parliament. The Minister, who was followed by the majority, vindicated him in everything that he had *done*, and found

him blamable only for what he *intended to do* ; justified every step of his *conduct*, and only criminated his proposed *intention* of converting the crimes of the zemindar to the benefit of the State, by a fine of fifty lacks of rupees. An impeachment of *error in judgment* with regard to the *quantum* of a fine, and for an *intention* that never was *executed*, and never known to the offending party, characterises a tribunal of *inquisition* rather than a court of Parliament."

Gentlemen, I am ready to admit that this sentiment might have been expressed in language more reserved and guarded ; but you will look to the sentiment itself, rather than to its dress ;—to the *mind* of the writer, and not to the bluntness with which he may happen to express it. It is obviously the language of a warm man, engaged in the honest defence of his friend, and who is brought to what he thinks a just conclusion in argument, which, perhaps, becomes offensive in proportion to its truth. Truth is undoubtedly no warrant for writing what is reproachful of any *private* man. If a member of society lives within the law, then if he offends, it is against God alone, and man has nothing to do with him ; and if he transgress the laws, the libeller should arraign him before them, instead of presuming to try him himself. But as to writings on *general subjects*, which are not charged as an infringement on the rights of individuals, but as of a seditious tendency, it is far otherwise. When, in the progress either of legislation, or of high national justice in Parliament, they, who are amenable to no law, are supposed to have adopted through mistake or error a principle which, if drawn into precedent, might be dangerous to the public,—I shall not admit it to be a libel, *in the course of a legal and bona fide publication*, to state that such a principle had *in fact* been adopted. The people of England are not to be kept in the dark touching the proceedings of their own representatives. Let us, therefore, coolly examine this supposed offence, and see what it amounts to.

First, Was not the conduct of the right honourable gentleman, whose name is here mentioned, exactly what it is represented ? Will the Attorney-General, who was present in the House of Commons, say that it was not ? Did not the Minister vindicate Mr. Hastings in what he *had done*, and was not his consent to that article of the impeachment founded on the *intention only* of levying a fine on the zemindar for the service of the State, beyond the quantum which he, the Minister, thought reasonable ? What else is this but an impeachment of error in judgment in the quantum of a fine ?

So much for the first part of the sentence, which, regarding Mr. Pitt only, is foreign to our purpose ; and as to the last part of it, which imputes the sentiments of the Minister to the majority that followed him with their votes on the question, that appears to me to be giving handsome credit to the majority for having voted from conviction, and not from courtesy to the

Minister. To have supposed otherwise, I dare not say, would have been a more *natural* libel, but it would certainly have been a greater one. The sum and substance, therefore, of the paragraph is only this: that an impeachment for error in judgment is not consistent with the theory or the practice of the English Government. So say I. I say, without reserve, speaking merely in the abstract, and not meaning to decide upon the merits of Mr. Hastings' cause, that an impeachment for an error in judgment is contrary to the whole spirit of English criminal justice, which, though not binding on the House of Commons, ought to be a guide to its proceedings. I say that the extraordinary jurisdiction of impeachment ought never to be assumed to expose error, or to scourge misfortune, but to hold up a terrible example to corruption and *wilful* abuse of authority by extra legal pains. If public men are always punished with due severity, when the source of their misconduct appears to have been *selfishly corrupt and criminal*, the public can never suffer when their errors are treated with gentleness. From such protection to the magistrate, no man can think lightly of the charge of magistracy itself, when he sees, by the language of the saving judgment, that the only title to it is an honest and zealous intention. If at this moment, gentlemen, or indeed in any other in the whole course of our history, the people of England were to call upon every man in this impeaching House of Commons, who had given his voice on public questions, or acted in authority, civil or military, to answer for the issues of our councils and our wars, and if honest single intentions for the public service were refused as answers to impeachments, we should have many relations to mourn for, and many friends to deplore. For my own part, gentlemen, I feel, I hope, for my country as much as any man that inhabits it; but I would rather see it fall, and be buried in its ruins, than lend my voice to wound any minister, or other responsible person, however unfortunate, who had fairly followed the lights of his understanding and the dictates of his conscience for their preservation.

Gentlemen, this is no theory of mine; it is the language of English law, and the protection which it affords to every man in office, from the highest to the lowest trust of Government. In no one instance that can be named, foreign or domestic, did the Court of King's Bench ever interpose its extraordinary jurisdiction, by information, against any magistrate for the widest departure from the rule of his duty, without *the plainest and clearest proof of corruption*. To every such application, not so supported, the constant answer has been, Go to a grand jury with your complaint. God forbid that a magistrate should suffer from an error in judgment, if his purpose was honestly to discharge his trust. We cannot stop the ordinary course of justice; but wherever the Court has a discretion, such a magistrate is entitled to its protection. I appeal to the noble Judge, and to every man who hears me, for the truth and

universality of this position. And it would be a strange solecism indeed to assert, that in a case where the supreme court of criminal justice in the nation would refuse to interpose an *extraordinary*, though a legal jurisdiction, on the principle that the ordinary execution of the laws should never be exceeded but for the punishment of malignant guilt, the Commons, in their higher capacity, growing out of the same constitution, should reject that principle, and stretch them still further by a jurisdiction still more *eccentric*. Many impeachments have taken place, because the law *could not* adequately punish the objects of them ; but who ever heard of one being set on foot because the law, upon principle, *would not* punish them? Many impeachments have been adopted for a *higher* example than a prosecution in the ordinary courts, but surely never for a *different* example. The matter, therefore, in the offensive paragraph, is not only an indisputable truth, but a truth in the propagation of which we are all deeply concerned.

Whether Mr. Hastings, in the particular instance, acted from corruption or from zeal for his employers, is what I have nothing to do with ; it is to be decided in judgment ; my duty stops with wishing him, as I do, an honourable deliverance. Whether the Minister or the Commons meant to found this article of the impeachment on mere error without corruption, is likewise foreign to the purpose. The author could only judge from what was said and done on the occasion. He only sought to guard the principle, which is a common interest, and the rights of Mr. Hastings under it. He was therefore justified in publishing that an impeachment, founded in error in judgment, was to all intents and purposes illegal, unconstitutional, and unjust.

Gentlemen, it is now time for us to return again to the work under examination. The author, having discussed the whole of the first article through so many pages, without even the imputation of an incorrect or intemperate expression, except in the concluding passage (the meaning of which I trust I have explained), goes on with the same earnest disposition to the discussion of the second charge respecting the princesses of Oude, which occupies EIGHTEEN pages, not one syllable of which the Attorney-General has read, and on which there is not even a glance at the House of Commons. The whole of this answer is indeed so far from being a mere cloak for the introduction of slander, that I aver it to be one of the most masterly pieces of writing I ever read in my life. From thence he goes on to the charge of contracts and salaries, which occupies FIVE pages more, in which *there is not a glance at the House of Commons, nor a word read by the Attorney-General*. He afterwards defends Mr. Hastings against the charges respecting the opium contracts. *Not a glance at the House of Commons ; not a word by the Attorney-General*. And in short, in this manner he goes on with the others to the end of the book.

Now is it possible for any human being to believe that a man, having no other intention than to vilify the House of Commons (*as this information charges*), should yet keep his mind thus fixed and settled as the needle to the pole, upon the serious merits of Mr. Hastings' defence, without ever straying into matter even questionable, except in the two or three selected parts out of two or three hundred pages? This is a forbearance which could not have existed if calumny and detraction had been the malignant objects which led him to the inquiry and publication. The whole fallacy, therefore, arises from holding up to view a few detached passages, and carefully concealing the general tenor of the book.

Having now finished most, if not all, of these *critical* observations, which it has been my duty to make upon this unfair mode of prosecution, it is but a tribute of common justice to the Attorney-General (and which my personal regard for him makes it more pleasant to pay), that none of my commentaries reflect in the most distant manner upon him; nor upon the Solicitor for the Crown, who sits near me, who is a person of the most correct honour: far from it. The Attorney-General, having orders to prosecute, in consequence of the address of the House to his Majesty, had no choice in the mode,—no means at all of keeping the prosecutors before you in countenance but by the course which has been pursued: but so far has he been from enlisting into the cause those prejudices which it is not difficult to slide into a business originating from such exalted authority, he has honourably guarded you against them,—pressing indeed severely upon my client with the weight of his ability, but not with the glare and trappings of his high office.

Gentlemen, I wish that my strength would enable me to convince you of the author's singleness of intention, and of the merit and ability of his work, by reading the whole that remains of it. But my voice is already nearly exhausted; I am sorry my client should be a sufferer by my infirmity. One passage, however, is too striking and important to be passed over; the rest I must trust to your private examination. The author, having discussed all the charges, article by article, sums them all up with this striking appeal to his readers:—

"The authentic statement of facts which has been given, and the arguments which have been employed, are, I think, sufficient to vindicate the character and conduct of Mr. Hastings, even on the maxims of European policy. When he was appointed Governor-General of Bengal, he was invested with a discretionary power to promote the interests of the India Company, and of the British Empire in that quarter of the globe. The general instructions sent to him from his constituents were, '*That in all your deliberations and resolutions, you make the safety and prosperity of Bengal your principal object, and fix your attention on the security of the*

possessions and revenues of the Company. His superior genius sometimes acted in the spirit, rather than complied with the letter of the law; but he discharged the trust, and preserved the empire committed to his care in the same way and with greater splendour and success than any of his predecessors in office. His departure from India was marked with the lamentations of the natives and the gratitude of his countrymen; and on his return to England he received the cordial congratulations of that numerous and respectable society whose interests he had promoted, and whose dominions he had protected and extended."

Gentlemen of the jury, if this be a wilfully false account of the instructions given to Mr. Hastings for his government, and of his conduct under them, the author and publisher of this defence deserve the severest punishment for a mercenary imposition on the public. But if it be true that he was directed to make the *safety and prosperity of Bengal the first object of his attention*, and that, under his administration, it has been safe and prosperous,—if it be true that the security and preservation of our possessions and revenues in Asia were marked out to him as the great leading principle of his government, and that those possessions and revenues, amidst unexampled dangers, have been secured and preserved,—then a question may be unaccountably mixed with your consideration much beyond the consequence of the present prosecution, involving perhaps the merit of the impeachment itself which gave it birth,—a question which the Commons, as prosecutors of Mr. Hastings, should, in common prudence, have avoided; unless, regretting the unwieldy length of their proceedings against him, they wished to afford him the opportunity of this strange anomalous defence. For although I am neither his counsel, nor desire to have anything to do with his guilt or innocence, yet in the collateral defence of my client, I am driven to state matter which may be considered by many as hostile to the impeachment; for if our dependencies have been secured and their interests promoted, I am driven, in the defence of my client, to remark, that it is mad and preposterous to bring to the standard of justice and humanity the exercise of a dominion founded upon violence and terror. It may and must be true that Mr. Hastings has repeatedly offended against the rights and privileges of Asiatic government, if he was the faithful deputy of a power which could not maintain itself for an hour without trampling upon both: he may and must have offended against the laws of God and nature, if he was the faithful viceroy of an empire wrested in blood from the people to whom God and nature had given it: he may and must have preserved that unjust dominion over timorous and abject nations by a terrifying, overbearing, insulting superiority, if he was the faithful administrator of your Government, which having no root in consent or affection, no foundation in similarity of interests, nor support from

any one principle which cements men together in society, could only be upheld by alternate stratagem and force. The unhappy people of India, feeble and effeminate as they are from the softness of their climate, and subdued and broken as they have been by the knavery and strength of civilisation, still occasionally start up in all the vigour and intelligence of insulted nature. To be governed at all, they must be governed with a rod of iron ; and our empire in the East would, long since, have been lost to Great Britain, if civil skill and military prowess had not united their efforts to support an authority—which Heaven never gave—by means which it never can sanction.

Gentlemen, I think I can observe that you are touched with this way of considering the subject, and I can account for it. I have not been considering it through the cold medium of books, but have been speaking of man and his nature, and of human dominion, from what I have seen of them myself amongst reluctant nations submitting to our authority. I know what they feel, and how such feelings can alone be repressed. I have heard them, in my youth, from a naked savage, in the indignant character of a prince surrounded by his subjects, addressing the governor of a British colony, holding a bundle of sticks in his hand as the notes of his unlettered eloquence. "Who is it ?" said the jealous ruler over the desert encroached upon by the restless foot of English adventure,—“who is it that causes this river to rise in the high mountains, and to empty itself into the ocean ? Who is it that causes to blow the loud winds of winter, and that calms them again in the summer ? Who is it that rears up the shade of those lofty forests, and blasts them with the quick lightning at his pleasure ? The same Being who gave to you a country on the other side of the waters, and gave ours to us ; and by this title we will defend it,” said the warrior, throwing down his tomahawk upon the ground, and raising the war-sound of his nation. These are the feelings of subjugated man all round the globe ; and depend upon it, nothing but fear will control where it is vain to look for affection.

These reflections are the only antidotes to those anathemas of superhuman eloquence which have lately shaken these walls that surround us, but which it unaccountably falls to my province, whether I will or no, a little to stem the torrent of, by reminding you that you have a mighty sway in Asia, which cannot be maintained by the finer sympathies of life, or the practice of its charities and affections. What will they do for you when surrounded by two hundred thousand men with artillery, cavalry, and elephants, calling upon you for their dominions which you have robbed them of ? Justice may, no doubt, in such a case forbid the levying of a fine to pay a revolting soldiery ; a treaty may stand in the way of increasing a tribute to keep up the very existence of the government ; and delicacy for women may forbid all entrance into a

zenana for money, whatever may be the necessity for taking it. All these things must ever be occurring. But under the pressure of such constant difficulties, so dangerous to national honour, it might be better perhaps to think of effectually securing it altogether, by recalling our troops and our merchants, and abandoning our Oriental Empire. Until this be done, neither religion nor philosophy can be pressed very far into the aid of reformation and punishment. If England, from a lust of ambition and dominion, will insist on maintaining despotic rule over distant and hostile nations, beyond all comparison more numerous and extended than herself, and gives commission to her viceroys to govern them with no other instructions than to preserve them, and to secure permanently their revenues; with what colour of consistency or reason can she place herself in the moral chair, and affect to be shocked at the execution of her own orders; adverting to the exact measure of wickedness and injustice necessary to their execution, and complaining only of *the excess* as the immorality, considering her authority as a dispensation for breaking the commands of God, and the breach of them as only punishable when contrary to the ordinances of man.

Such a proceeding, gentlemen, begets serious reflections. It would be better, perhaps, for the masters and the servants of all such governments to join in supplication, that the great Author of violated humanity may not confound them together in one common judgment.

Gentlemen, I find, as I said before, I have not sufficient strength to go on with the remaining parts of the book. I hope, however, that, notwithstanding my omissions, you are now completely satisfied, that whatever errors or misconceptions may have misled the writer of these pages, the justification of a person whom he believed to be innocent, and whose accusers had themselves appealed to the public, was the single object of his contemplation. If I have succeeded in that object, every purpose which I had in addressing you has been answered.

It only now remains to remind you, that another consideration has been strongly pressed upon you, and no doubt will be insisted on in reply. You will be told that the matters which I have been justifying as legal and even meritorious, have therefore been not made the subject of complaint; and that whatever intrinsic merit parts of the book may be supposed or even admitted to possess, such merit can afford no justification to the selected passages, some of which, even with the context, carry the meaning charged by the information, and which are indecent animadversions on authority. To this I would answer (still protesting as I do against the application of any one of the innuendoes), that if you are firmly persuaded of the singleness and purity of the author's intentions, you are not bound to subject him to infamy, because, in the zealous

career of a just and animated composition, he happens to have tripped with his pen into an intemperate expression in one or two instances of a long work. If this severe duty were binding on your consciences, the liberty of the press would be an empty sound, and no man could venture to write on any subject, however pure his purpose, without an attorney at one elbow, and a counsel at the other.

From minds thus subdued by the terrors of punishment, there could issue no works of genius to expand the empire of human reason, nor any masterly compositions on the general nature of government, by the help of which the great commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures, by which, from time to time, our own constitution, by the exertion of patriot citizens, has been brought back to its standard. Under such terrors, all the great lights of science and civilisation must be extinguished: for men cannot communicate their free thoughts to one another with a lash held over their heads. It is the nature of everything that is great and useful, both in the animate and inanimate world, to be wild and irregular,—and we must be contented to take them with the alloys which belong to them, or live without them. Genius breaks from the fetters of criticism, but its wanderings are sanctioned by its majesty and wisdom when it advances in its path;—subject it to the critic, and you tame it into dulness. Mighty rivers break down their banks in the winter, sweeping away to death the flocks which are fattened on the soil that they fertilise in the summer; the few may be saved by embankments from drowning, but the flock must perish for hunger. Tempests occasionally shake our dwellings and dissipate our commerce; but they scourge before them the lazy elements, which without them would stagnate into pestilence. In like manner, Liberty herself, the last and best gift of God to His creatures, must be taken just as she is;—you might pare her down into bashful regularity, and shape her into a perfect model of severe scrupulous law, but she would then be Liberty no longer; and you must be content to die under the lash of this inexorable justice which you had exchanged for the banners of Freedom.

If it be asked where the line to this indulgence and impunity is to be drawn, the answer is easy. The liberty of the press *on general subjects* comprehends and implies as much strict observance of positive law as is consistent with perfect purity of intention, and equal and useful society; and what that latitude is cannot be promulgated in the abstract, but must be judged of in the particular instance, and, consequently, upon this occasion, must be judged of by you without forming any possible precedent for any other case;—and where can the judgment be possibly so safe as with the members of that society which alone can suffer, if the writing is calculated to do mischief to the public? You must therefore try

the book by that criterion, and say whether the publication was premature and offensive, or, in other words, whether the publisher was bound to have suppressed it until the public ear was anticipated and abused, and every avenue to the human heart or understanding secured and blocked up? I see around me those by whom, by and by, Mr Hastings will be most ably and eloquently defended;* but I am sorry to remind my friends, that, but for the right of suspending the public judgment concerning him till their season of exertion comes round, the tongues of angels would be insufficient for the task.

Gentlemen, I hope I have now performed my duty to my client—I sincerely hope that I have; for, certainly, if ever there was a man pulled the other way by his interests and affections,—if ever there was a man who should have trembled at the situation in which I have been placed on this occasion, it is myself, who not only love, honour, and respect, but whose future hopes and preferences are linked from free choice with those who, from the mistakes of the author, are treated with great severity and injustice. These are strong retardments; but I have been urged on to activity by considerations which can never be inconsistent with honourable attachments, either in the political or social world,—the love of justice and of liberty, and a zeal for the constitution of my country, which is the inheritance of our posterity, of the public, and of the world. These are the motives which have animated me in defence of this person, who is an entire stranger to me—whose shop I never go to—and the author of whose publication, as well as Mr. Hastings, who is the object of it, I never spoke to in my life.

One word more, gentlemen, and I have done. Every human tribunal ought to take care to administer justice, as we look hereafter to have justice administered to ourselves. Upon the principle on which the Attorney-General prays sentence upon my client—God have mercy upon us!—instead of standing before Him in judgment with the hopes and consolations of Christians, we must call upon the mountains to cover us: for which of us can present, for Omniscient examination, a pure, unspotted, and faultless course? But I humbly expect that the benevolent Author of our being will judge us as I have been pointing out for your example. Holding up the great volume of our lives in His hands, and regarding the general scope of them;—if He discovers benevolence, charity, and good-will to man beating in the heart, where He alone can look;—if He finds that our conduct, though often forced out of the path by our infirmities, has been in general well directed;—His all-searching eye will assuredly never pursue us into those little corners of our lives, much less will His justice select them for punishment, without the general context of our existence, by which faults may be

* Mr. Law, now Lord Ellenborough, Mr. Plumer, and Mr. Dallas.

sometimes found to have grown out of virtues, and very many of our heaviest offences to have been grafted by human imperfection upon the best and kindest of our affections. No, gentlemen, believe me, this is not the course of divine justice, or there is no truth in the Gospels of Heaven. If the general tenor of a man's conduct be such as I have represented it, he may walk through the shadow of death, with all his faults about him, with as much cheerfulness as in the common paths of life; because he knows, that instead of a stern accuser to expose before the Author of his nature those frail passages, which, like the scored matter in the book before you, chequers the volume of the brightest and best-spent life, His mercy will obscure them from the eye of His purity, and our repentance blot them out for ever.

All this would, I admit, be perfectly foreign and irrelevant, if you were sitting here in a case of property between man and man, where a strict rule of law must operate, or there would be an end of civil life and society. It would be equally foreign, and still more irrelevant, if applied to those shameful attacks upon private reputation which are the bane and disgrace of the press; by which whole families have been rendered unhappy during life, by aspersions cruel, scandalous, and unjust. Let SUCH LIBELLERS remember, that no one of my principles of defence can at any time or upon any occasion ever apply to shield THEM from punishment; because such conduct is not only an infringement of the rights of men, as they are defined by strict law, *but is absolutely incompatible with honour, honesty, or mistaken good intentions.* On such men let the Attorney-General bring forth all the artillery of his office, and the thanks and blessings of the whole public will follow him. But this is a totally different case. *Whatever private calumny may mark this work, it has not been made the subject of complaint, and we have therefore nothing to do with that, nor any right to consider it.* We are trying whether the public could have been considered as offended and endangered, if Mr. Hastings himself, in whose place the author and publisher have a right to put themselves, had, under all the circumstances which have been considered, composed and published the volume under examination. That question cannot, in common sense, be anything resembling a *question of LAW*, but is a pure question of *FACT*, to be decided on the principles which I have humbly recommended. I therefore ask of the Court that the book itself may now be delivered to you. Read it with attention, and as you shall find it, pronounce your verdict.

The jury withdrew for about two hours, when they returned into court with a verdict finding the defendant NOT GUILTY.

SPEECH in defence of THOMAS PAINE, prosecuted at Westminster by the Crown for "*The Rights of Man, Part the Second; combining Principle and Practice: by Thomas Paine, Secretary for Foreign Affairs to Congress, in the American War, and Author of the Work intituled Common Sense, and the First Part of the Rights of Man: the Second Edition. London, printed for J. S. Jordan, No. 166 Fleet Street, 1792.*"

The publication having been proved, and a letter from Mr. Paine acknowledging it; the letter to the Attorney-General mentioned in the preface; and the passages selected in the information, having been read; Mr. Erskine, as counsel for the defendant, spoke as follows :—

GENTLEMEN OF THE JURY,—The Attorney-General, in that part of his address which referred to a letter supposed to have been written to him from France, exhibited signs of strong sensibility and emotion. I do not, I am sure, charge him with acting a part to seduce you; on the contrary, I am persuaded, from my own feelings, and from my acquaintance with my friend from our childhood upwards, that HE expressed himself as he felt. But, gentlemen, if he felt those painful embarrassments, you may imagine what MINE must be: he can only feel for the august character whom he represents in this place as a subject for his Sovereign, too far removed by custom from the intercourses which generate affections, to produce any other sentiments than those that flow from a relation common to us all: but it will be remembered that I stand in the same relation* towards another great person more deeply implicated by this supposed letter; who, not restrained from the cultivation of personal attachments by those qualifications which must always secure them, has exalted my duty to a Prince into a warm and honest affection between man and man. Thus circumstanced, I certainly should have been glad to have had an earlier opportunity of knowing correctly the contents of this letter, and whether (which I positively deny) it proceeded from the defendant. Coming thus suddenly upon us, I see but too plainly the impression it has made upon *you*, who are to try the cause, and

* Mr. Erskine was then Attorney-General to the Prince of Wales.

I feel its weight upon *myself*, who am to conduct it; but this shall neither detach me from my duty, nor enervate me (if I can help it) in the discharge of it.

If the Attorney-General be well founded in the commentaries he has made to you upon the book which he prosecutes; if he be warranted by the law of England in repressing its circulation, from the illegal and dangerous matters contained in it; if that suppression be, as he avows it, and as in common sense it must be, the sole object of the prosecution, the public has great reason to lament that this letter should have been at all brought into the service of the cause. It is no part of the charge upon the record; it had no existence for months after the work was composed and published; it was not written by the defendant, if written by him at all, till after he had been in a manner insultingly expelled from the country by the influence of Government; it was not even written till he had become the subject of another country. It cannot, therefore, by any fair inference, decipher the mind of the author when he composed his work; still less can it affect the construction of the language in which it is written. The introduction of this letter at all is, therefore, not only a departure from the charge, but a dereliction of the object of the prosecution, which is to condemn *the book*: since, if the condemnation of the author is to be obtained, *not by the work itself*, but by *collateral matter*, not even existing when it was written, nor known to its various publishers throughout the kingdom, how can a verdict upon *such* grounds condemn the work, or criminate *other* publishers, strangers to the collateral matter on which the conviction may be obtained to-day? I maintain, therefore, upon every principle of sound policy, as it affects the interests of the Crown, and upon every rule of justice, as it affects the author of "The Rights of Man," that the letter should be wholly dismissed from your consideration.

Gentlemen, the Attorney-General has thought it necessary to inform you, that a rumour had been spread, and had reached his ears, that he only carried on the prosecution as a *public* prosecutor, but without the concurrence of his own judgment; and, therefore, to add the just weight of his *private* character to his public duty, and to repel what he thinks a calumny, he tells you that he should have deserved to have been driven from society if he had not arraigned the work and the author before you. Here, too, we stand in situations very different. I have no doubt of the existence of such a rumour, and of its having reached his ears, because he says so; but for the narrow circle in which any rumour, personally implicating my learned friend's character, has extended, I might appeal to the multitudes who surround us, and ask, which of them all, except the few connected in office with the Crown, ever heard of its existence? But with regard to myself, every man within hearing at this moment, nay, the whole people of England,

have been witnesses to the calumnious clamour that, by every art, has been raised and kept up against me: in every place where business or pleasure collect the public together, day after day my name and character have been the topics of injurious reflection. And for what? only for not having shrunk from the discharge of a duty which no personal advantage recommended, and which a thousand difficulties repelled. But, gentlemen, I have no complaint to make, either against the printers of these libels, or even against their authors: the greater part of them, hurried perhaps away by honest prejudices, may have believed they were serving their *country* by rendering *me* the object of its suspicion and contempt; and if there had been amongst them others who have mixed in it from personal malice and unkindness, I thank God I can forgive *them* also. Little, indeed, did they know me, who thought that such calumnies would influence my conduct. I will for ever, at all hazards, assert the dignity, independence, and integrity of the ENGLISH BAR, without which, impartial justice, the most valuable part of the English constitution, can have no existence. From the moment that any advocate can be permitted to say that he *will* or will *not* stand between the Crown and the subject arraigned in the court where he daily sits to practise, from that moment the liberties of England are at an end. If the advocate refuses to defend, from what *he may think* of the charge or of the defence, he assumes the character of the Judge; nay, he assumes it before the hour of judgment; and in proportion to his rank and reputation, puts the heavy influence of, perhaps, a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very Judge to be his counsel.

: Gentlemen, it is now my duty to address myself without digression to the defence.

The first thing which presents itself in the discussion of any subject is to state distinctly, and with precision, what the question is, and, where prejudice and misrepresentation have been exerted, to distinguish it accurately from what it is not. The question, then, is not whether the constitution of our fathers—under which we live, under which I present myself before you, and under which alone you have any jurisdiction to hear me—be or be not preferable to the constitution of America or France, or any other human constitution. For upon what principle can a court, constituted by the authority of any Government, and administering a positive system of law under it, pronounce a decision against the constitution which creates its authority, or the rule of action which its jurisdiction is to enforce? The common sense of the most uninformed person must revolt at such an absurd supposition.

I have no difficulty, therefore, in admitting, that if by accident some or all of you were alienated in opinion and affection from the

forms and principles of the English Government, and were impressed with the value of that unmixed representative constitution which this work recommends and inculcates, you could not *on that account* acquit the defendant. Nay, to speak out plainly, I freely admit that even if you were avowed enemies to monarchy, and devoted to republicanism, you would be nevertheless bound by your oaths, as a jury sworn to administer justice according to the English law, to convict the author of "The Rights of Man," if it were brought home to your consciences that he had exceeded those widely-extended bounds which the ancient wisdom and liberal policy of the English constitution have allotted to the range of a free press. I freely concede this, because you have no jurisdiction to judge either the author or the work by any rule but that of English law, which is the source of your authority. But having made this large concession, it follows, by a consequence so inevitable as to be invulnerable to all argument or artifice, that if, on the other hand, you should be impressed (which I know you to be) not only with a dutiful regard, but with an enthusiasm, for the whole form and substance of your own Government; and though you should think that this work, in its circulation amongst classes of men unequal to political researches, may tend to alienate opinion; still you cannot, *upon such grounds*, without a similar breach of duty, convict the defendant of a libel—unless he has clearly stepped beyond that extended range of communication which the same ancient wisdom and liberal policy of the British constitution has allotted for the liberty of the press.

Gentlemen, I admit, with the Attorney-General, that in every case where a court has to estimate the quality of a writing, the *mind* and *intention* of the writer must be taken into the account;—the *bona* or *mala fides*, as lawyers express it, must be examined: for a writing may undoubtedly proceed from a motive, and be directed to a purpose, not to be deciphered by the mere construction of the thing written. But wherever a writing is arraigned as seditious or slanderous, not upon its ordinary construction in language, nor from the necessary consequences of its publication, under *any* circumstances, and at *all* times, but that the criminality springs from some *extrinsic matter*, not visible upon the page itself, nor universally operative, but capable only of being connected with it by evidence, so as to demonstrate the effect of the publication, and the design of the publisher; such a writing, not libellous *PER SE*, cannot be arraigned as the author's work is arraigned upon the record before the court. I maintain, without the hazard of contradiction, that the law of England positively requires, for the security of the subject, that every charge of a libel complicated with *extrinsic facts and circumstances, dehors the writing*, must appear literally upon the record by an averment of such extrinsic facts and circumstances, that the defendant may

know what crime he is called upon to answer, and how to stand upon his defence. What crime is it that the defendant comes to answer for to-day?—what is the notice that I, who am his counsel, have from this parchment of the crime alleged against him? I come to defend his having written *this book*. The record states nothing else:—the general charge of sedition in the introduction is notoriously paper and packthread; because the innuendoes cannot enlarge the sense or natural construction of the text. The record does not state any one *extrinsic fact or circumstance* to render the work criminal at one time more than *another*; it states no peculiarity of time or season or intention, not provable from the writing itself, which is the naked charge upon record. There is nothing, therefore, which gives you any jurisdiction beyond the construction of the *work itself*; and you cannot be justified in finding it criminal because published at *this* time, unless it would have been a criminal publication under any circumstances, or at *any other* time.

The law of England, then, both in its forms and substance, being the only rule by which the author or the work can be justified or condemned, and the charge upon the record being the naked charge of a libel, the cause resolves itself into a question of the deepest importance to us all—THE NATURE AND EXTENT OF THE LIBERTY OF THE ENGLISH PRESS.

But before I enter upon it, I wish to fulfil a duty to the defendant, which, if I do not deceive myself, is at this moment peculiarly necessary to his impartial trial. If an advocate entertains sentiments injurious to the defence he is engaged in, he is not only justified, but bound in duty, to conceal them; so, on the other hand, if his own genuine sentiments, or anything connected with his character or situation, can add strength to his professional assistance, he is bound to throw them into the scale. In addressing myself, therefore, to gentlemen not only zealous for the honour of English Government, but *visibly* indignant at any attack upon its principles, and who would, perhaps, be impatient of arguments from a suspected quarter, I give my client the benefit of declaring that I am, and ever have been, attached to the genuine principles of the British Government; and that, however the Court or you may reject the application, I defend him upon principles not only consistent with its permanence and security, but without the establishment of which it never could have had an existence.

The proposition which I mean to maintain as the basis of the liberty of the press, and without which it is an empty sound, is this: that every man, not intending to mislead, but seeking to enlighten others with what his own reason and conscience, however erroneously, have dictated to him as truth, may address himself to the universal reason of a whole nation, either upon the subject of governments in general, or upon that of our own particular

country: that he may analyse the principles of its constitution, point out its errors and defects, examine and publish its corruptions, warn his fellow-citizens against their ruinous consequences, and exert his whole faculties in pointing out the most advantageous changes in establishments which he considers to be radically defective, or sliding from their object by abuse. All this every subject of this country has a right to do, if he contemplates only what he thinks would be for its advantage, and but seeks to change the public mind by the conviction which flows from reasonings dictated by conscience.

If, indeed, he writes *what he does not think*; if, contemplating the misery of others, he wickedly condemns what his own understanding approves; or, even admitting his real disgust against the Government or its corruptions, if he *calumniates living magistrates*, or holds out to individuals that they have a right to run before the public mind in their *conduct*; that they may oppose, by contumacy or force, what private reason only disapproves; that they may disobey the law, because their judgment condemns it; or resist the public will, because they honestly wish to change it—he is then a criminal upon every principle of rational policy, as well as upon the immemorial precedents of English justice; because such a person seeks to disunite individuals from their duty to the whole, and excites to overt acts of *misconduct* in a part of the community, instead of endeavouring to change, by the impulse of reason, that universal assent which, in this and in every country, constitutes the law for all.

I have, therefore, no difficulty in admitting that, if upon an attentive perusal of this work, it shall be found that the defendant has promulgated any doctrines which excite individuals to withdraw from their subjection to the law by which the whole nation consents to be governed; if his book shall be found to have warranted or excited that unfortunate criminal who appeared here yesterday to endeavour to relieve himself from imprisonment by the destruction of a prison, or dictated to him the language of defiance which ran through the whole of his defence; if throughout the work there shall be found any syllable or letter which strikes at the security of property, or which hints that anything less than *the whole nation* can constitute the law, or that the law, be it what it may, is not the inexorable rule of action for every individual, I willingly yield him up to the justice of the Court.

Gentlemen, I say, in the name of Thomas Paine, and in his words as author of "The Rights of Man," as written in the very volume that is charged with seeking the destruction of property—

"The end of all political associations is the preservation of the rights of man, which rights are liberty, property, and security; that the nation is the source of all sovereignty derived from it: the right of property being secured and inviolable, no one ought

to be deprived of it, except in cases of evident public necessity, legally ascertained, and on condition of a previous just indemnity."

These are undoubtedly the rights of man—the rights for which all governments are established—and the only rights Mr. Paine contends for; but which he thinks (no matter whether right or wrong) are better to be secured by a republican constitution than by the forms of the English Government. He instructs me to admit that, when government is once constituted, no individuals, without rebellion, can withdraw their obedience from it; that all attempts to excite them to it are highly criminal, for the most obvious reasons of policy and justice; that nothing short of the will of a WHOLE PEOPLE can change or affect the rule by which a nation is to be governed; and that no private opinion, however honestly inimical to the forms or substance of the law, can justify resistance to its authority, while it remains in force. The author of "The Rights of Man" not only admits the truth of all this doctrine, but he consents to be convicted, and I also consent for him, unless his work shall be found studiously and painfully to inculcate those great principles of government which it is charged to have been written to destroy.

Let me not, therefore, be suspected to be contending that it is lawful to write a book pointing out defects in the English Government, and exciting individuals to destroy its sanctions, and to refuse obedience. But, on the other hand, I do contend, that it is lawful to address the English nation on these momentous subjects; for had it not been for this inalienable right (thanks be to God and our fathers for establishing it!), how should we have had this constitution which we so loudly boast of? If, in the march of the human mind, no man could have gone before the establishments of the time he lived in, how could our establishment, by reiterated changes, have become what it is? If no man could have awakened the public mind to errors and abuses in our Government, how could it have passed on from stage to stage, through reformation and revolution, so as to have arrived from barbarism to such a pitch of happiness and perfection, that the Attorney-General considers it as profanation to touch it further, or to look for any future amendment?

In this manner power has reasoned in every age; Government, in *its own estimation*, has been at all times a system of perfection; but a free press has examined and detected its errors, and the people have from time to time reformed them. This freedom has alone made our Government what it is; this freedom alone can preserve it; and therefore, under the banners of that freedom, to-day I stand up to defend Thomas Paine. But how, alas! shall this task be accomplished? How may I expect from you what human nature has not made man for the performance of? How

am I to address your reasons, or ask them to pause, amidst the torrent of prejudice which has hurried away the public mind on the subject you are to judge?

Was any Englishman ever so brought as a criminal before an English court of justice? If I were to ask you, gentlemen of the jury, what is the choicest fruit that grows upon the tree of English liberty, you would answer, *SECURITY UNDER THE LAW*. If I were to ask the whole people of England the return they looked for at the hands of Government for the burdens under which they bend to support it, I should still be answered, *SECURITY UNDER THE LAW*; or, in other words, an impartial administration of justice. So sacred, therefore, has the freedom of trial been ever held in England; so anxiously does justice guard against every possible bias in her path, that if the public mind has been locally agitated upon any subject in judgment, the forum has either been changed, or the trial postponed. The circulation of any paper that brings, or can be supposed to bring, prejudice, or even well-founded knowledge, within the reach of a British tribunal, *on the spur of an occasion*, is not only highly criminal, but defeats itself, by leading to put off the trial which its object was to pervert. On this principle, the noble and learned Judge will permit me to remind him, that on the trial of the Dean of St. Asaph for a libel, or rather when he was brought to trial, the circulation of books by a society favourable to his defence was held by his Lordship, as Chief-Justice of Chester, to be a reason for not trying the cause; * although they contained no matter relative to the Dean, nor to the object of his trial; being only extracts from ancient authors of high reputation on the general rights of juries to consider the innocence as well as the guilt of the accused; yet still, as the recollection of these rights was pressed forward *with a view to affect the proceedings*, the proceedings were postponed.

Is the defendant, then, to be the only exception to these admirable provisions? Is the English law to judge *him*, stripped of the armour with which its universal justice encircles *all others*? Shall we, in the very act of judging him for detracting from the English Government, furnish him with ample matter for just reprobation, instead of detraction? Has not his cause been prejudged through a thousand channels? Has not the work before you been daily and publicly reviled, and his person held up to derision and reproach? Has not the public mind been excited by crying down the very phrase and idea of "The Rights of Man"? Nay, have not associations of gentlemen,—I speak it with regret, because I am persuaded, from what I know of some of them, that they, amongst them at least, thought they were serving the public,—yet have they not, in utter contempt and ignorance of that constitution of which they declare themselves to be the guardians, published the grossest attacks upon the defendant? Have they not, even while the cause

has been standing here for immediate trial, published a direct protest against the very work now before you ; advertising in the same paper, though under the general description of seditious libels, a reward on the conviction of any person who should dare to sell the book itself, to which their own publication was an answer ? The Attorney-General has spoken of a forced circulation of this work ; but how have these prejudging papers been circulated ? We all know how. They have been thrown into our carriages in every street ; they have met us at every turnpike ; and they lie in the areas of all our houses. To complete the triumph of prejudice, that high tribunal of which I have the honour to be a member (my learned friends know what I say to be true), has been drawn into this vortex of slander ; and some of its members,—I must not speak of the House itself,—have thrown the weight of their stations into the same scale. By all these means I maintain that this cause has been prejudged.

It may be said, that I have made no motion to put off the trial for these causes, and that courts of themselves take no cognisance of what passes elsewhere, without facts laid before them. Gentlemen, I know that I should have had equal justice from the Court, if I had brought myself within the rule. But when should I have been better in the present aspect of things ? And I only remind you, therefore, of all these hardships, that you may recollect that your judgment is to proceed upon that alone which meets you *here*, upon *the evidence* in the cause, and not upon suggestions destructive of every principle of justice.

Having disposed of these foreign prejudices, I hope you will as little regard some arguments that have been offered to you in court. The letter which has been so repeatedly pressed upon you ought to be dismissed even from your recollection. I have already put it out of the question, as having been written long subsequent to the book, and as being a libel on the King, which no part of the information charges, and which may hereafter be prosecuted as a distinct offence. I consider that letter, besides, and indeed have always heard it treated, as a forgery, contrived to injure the merits of the cause, and to embarrass *me personally* in its defence. I have a right so to consider it, because it is unsupported by anything similar at an earlier period. The defendant's whole deportment, previous to the publication, has been wholly unexceptionable : he properly desired to be given up as the author of the book, if any inquiry should take place concerning it : and he is not affected in evidence, either directly or indirectly, with any illegal or suspicious conduct ; not even with having uttered an indiscreet or taunting expression, nor with any one matter or thing inconsistent with the duty of the best subject in England. His *opinions* indeed were adverse to our system ; but I maintain that *OPINION* is free, and that *CONDUCT* alone is amenable to the law.

You are next desired to judge of the author's mind and intention by the modes and extent of the circulation of his work. The FIRST part of "The Rights of Man," Mr. Attorney-General tells you he did not prosecute, although it was in circulation through the country for a year and a half together, because it seems it circulated only amongst what he styles the judicious part of the public, who possessed in their capacities and experience an antidote to the poison; but that, with regard to the SECOND part now before you, its circulation had been forced into every corner of society; had been printed and reprinted for cheapness even upon whited-brown paper, and had crept into the very nurseries of children as a wrapper for their sweetmeats.

In answer to this statement, which after all stands only upon Mr. Attorney-General's own assertion, unsupported by any kind of proof (no witness having proved the author's personal interference with the sale), I still maintain, that if he had the most anxiously promoted it, the question would remain exactly THE SAME: the question would still be, whether at the time when Paine composed his work, and promoted the most extensive purchase of it, he believed or disbelieved what he had written?—and whether he contemplated the happiness or the misery of the English nation, to which it is addressed? And whichever of these intentions may be evidenced to your judgments upon reading the book itself, I confess I am utterly at a loss to comprehend how a writer can be supposed to mean something different from what he has written, by proof of an anxiety (common, I believe, to all authors) that his work should be generally read. Remember, I am not asking your opinions of the *doctrines themselves*,—you have given them already pretty visibly since I began to address you,—but I shall appeal not only to you, but to those who, without our leave, will hereafter judge, and without appeal, of all that we are doing to-day,—whether, upon the matter which I hasten to lay before you, you can refuse to pronounce, that from his education,—from the accidents and habits of his life,—from the time and occasion of the publication,—from the circumstances attending it,—and from every line and letter of the work itself, and from all his other writings, his conscience and understanding (*no matter whether erroneously or not*) were deeply and solemnly impressed with the matters contained in his book?—that he addressed it to the reason of the nation at large, and not to the passions of individuals?—and that, in the issue of its influence, he contemplated only what appeared to *him* (*though it may not to us*) to be the interest and happiness of England, and of the whole human race? In drawing the one or the other of these conclusions, the book stands first in order, and it shall now speak for itself.

Gentlemen, *the whole of it* is in evidence before you; the particular parts arraigned having only been read by my consent, upon

the presumption that, on retiring from the court, you would carefully compare them with the context, and all the parts with the **WHOLE VIEWED TOGETHER**. You cannot indeed do justice without it. The most common letter, even in the ordinary course of business, cannot be read in a cause to prove an obligation for twenty shillings without **THE WHOLE** being read, that the writer's meaning may be seen without deception. But in a criminal charge, comprehending only four pages and a half, out of a work containing nearly two hundred, you cannot, with even the appearance of common decency, pronounce a judgment without the most deliberate and cautious comparison. I observe that the noble and learned Judge confirms me in this observation.

If any given part of a work be legally explanatory of every other part of it, the preface, *à fortiori*, is the most material; because the preface is the author's own key to his writing: it is *there* that he takes the reader by the hand, and introduces him to his subject: it is *there* that the spirit and intention of the whole is laid before him by way of prologue. A preface is meant by the author as a clue to ignorant or careless readers: the author says by it, to every man who chooses to begin where he ought, Look at my plan,—attend to my distinctions,—mark the purpose and limitations of the matter I lay before you.

Let, then, the calumniators of Thomas Paine now attend to his preface, where, to leave no excuse for ignorance or misrepresentation, he expresses himself thus:—

“I have differed from some professional gentlemen on the subject of prosecutions, and I since find they are falling into my opinion, which I will here state as fully but as concisely as I can.

“I will first put a case with respect to any law, and then compare it with a government, or with what in England is or has been called a constitution.

“It would be an act of despotism, or what in England is called arbitrary power, to make a law to prohibit investigating the principles, good or bad, on which such a law, or any other, is founded.

“If a law be bad, it is one thing to *oppose the practice* of it, but it is quite a different thing to *expose its errors*, to *reason* on its defects, and to *show cause* why it should be repealed, or why another ought to be substituted in its place. I have always held it an opinion (making it also my practice), that it is better to obey a bad law, making use at the same time of every argument to show its errors and procure its repeal, than forcibly to violate it; because the precedent of breaking a bad law might weaken the force, and lead to a discretionary violation, of those which are good.

“The case is the same with principles and forms of governments, or to what are called constitutions, and the parts of which they are composed.

"It is for the good of nations, and not for the emolument or aggrandisement of particular individuals, that government ought to be established, and that mankind are at the expense of supporting it. The defects of every government and constitution, both as to principle and form, must, on a parity of reasoning, be as open to discussion as the defects of a law, and it is a duty which every man owes to society to point them out. When those defects and the means of remedying them are generally seen by a NATION, THAT NATION will reform its government or its constitution in the one case as the government repealed or reformed the law in the other."

Gentlemen, you must undoubtedly wish to deal with every man who comes before you in judgment as you would be dealt by: and surely you will not lay it down to-day as a law to be binding hereafter, even upon yourselves, that if you should publish any opinion concerning existing abuses in your country's government, and point out to the whole public the means of amendment, you are to be acquitted or convicted as any twelve men may happen to agree with you in your *opinions*. Yet this is precisely what you are asked to do to another—it is precisely the case before you. Mr. Paine expressly says, I obey a law until it is repealed; obedience is not only my principle but my practice, since my disobedience of a law, from thinking it *bad*, might apply to justify another man in the disobedience of a *good one*; and thus individuals would give the rule for themselves, and not society for all. You will presently see that the same principle pervades the whole work; and I am the more anxious to call your attention to it, however repetition may tire you, because it unfolds the whole principle of my argument; for, if you find a sentence in the whole book that invests any individual, or any number of individuals, or any community short of the WHOLE NATION, with a power of changing any part of the law or constitution, I abandon the cause,—YES, I freely abandon it, because I will not affront the majesty of a court of justice by maintaining propositions which, even upon the surface of them, are false. Mr. Paine, page 162–168, goes on thus—

"When a NATION changes its opinion and habits of thinking, it is no longer to be governed as before; but it would not only be wrong, but bad policy, to attempt by force what ought to be accomplished by reason. Rebellion consists in forcibly opposing the general will of a nation, whether by a party or by a government. There ought, therefore, to be, in every nation, a method of occasionally ascertaining the state of public opinion with respect to government.

"There is, therefore, no power but the voluntary will of the people that has a right to act in any matter respecting a general reform; and, by the same right that two persons can confer on such a subject, a thousand may. The object in all such prelimi-

nary proceedings is, to find out what the GENERAL SENSE OF A NATION is, and to be governed by it. If it prefer a bad or defective government to a reform, or choose to pay ten times more taxes than there is occasion for, it has a right so to do ; and, so long as the majority do not impose conditions on the minority different to what they impose on themselves, though there may be much error, there is no injustice ; neither will the error continue long. Reason and discussion will soon bring things right, however wrong they may begin. By such a process no tumult is to be apprehended. The poor, in all countries, are naturally both peaceable and grateful in all reforms in which their interest and happiness are included. It is only by neglecting and rejecting them that they become tumultuous."

Gentlemen, these are the sentiments of the author of "The Rights of Man ;" and, whatever *his* opinions may be of the defects in our Government, it never can change ours concerning it, if our sentiments are just ; and a writing can never be seditious in the sense of the English law, which states that the Government leans on the UNIVERSAL WILL for its support.

This universal will is the best and securest title which His Majesty and his family have to the throne of these kingdoms ; and in proportion to the wisdom of our institutions, the title must in common sense become the stronger. So little idea, indeed, have I of any other, that in my place in Parliament, not a week ago, I considered it as the best way of expressing my reverence to the constitution, as established at the Revolution, to declare (I believe in the presence of the Heir-Apparent to the Crown, to whom I have the greatest personal attachment), that His Majesty reigned in England by choice and consent, as the magistrate of the English people ; not indeed a consent and choice by personal election, like a King of Poland,—the worst of all possible constitutions ; but by the election of a family for great national objects, in defiance of that hereditary right, which only becomes tyranny, in the sense of Mr. Paine, when it claims to inherit a nation, instead of governing by their consent, and continuing for its benefit. This sentiment has the advantage of Mr. Burke's high authority, who says with great truth, in a "Letter to his Constituents,"—"Too little dependence cannot be had at this time of day on names and prejudices : the eyes of mankind are opened ; and communities must be held together by a visible and solid interest." I believe, gentlemen of the jury, that the Prince of Wales will always render this title dear to the people. The Attorney-General can only tell you what he *believes* of him : I can tell you what I *KNOW*, and what I am bound to declare, since this Prince may be traduced in every part of the kingdom, without its coming in question, till brought in to load a defence with matter collateral to the charge. I therefore *assert* what the Attorney-General can only *hope*, that whenever that Prince

shall come to the throne of this country (which I pray, but by the course of nature, may never happen), he will make the constitution of Great Britain the foundation of all his conduct.

Having now established the author's general intention by his own introduction, which is the best and fairest exposition, let us next look at the occasion which gave it birth.

The Attorney-General, throughout the whole course of his address to you (I knew it would be so), has avoided the most distant notice or hint of any circumstance having led to the appearance of the author in the political world, after a silence of so many years: he has not even pronounced, or even glanced, at the name of Mr. Burke, but has left you to take it for granted that the defendant volunteered this delicate and momentous subject, and, without being led to it by the provocation of political controversy, had seized a favourable moment to stigmatise, from mere malice, and against his own confirmed opinions, the constitution of this country.

Gentlemen, my learned friend knows too well my respect and value for him to suppose that I am charging him with a wilful suppression; I know him to be incapable of it; he knew it would come from me. He will permit me, however, to lament that it should have been left for me to inform you, at this late period of the cause, that not only the work before you, but the first part, of which it is a natural continuation, were written, *avowedly and upon the face of them*, IN ANSWER TO MR. BURKE. They were written, besides, under circumstances to be explained hereafter, in the course of which explanation I may have occasion to cite a few passages from the works of that celebrated person. And I shall speak of him with the highest respect: for, with whatever contempt he may delight to look down upon my humble talents, however he may disparage the principles which direct my public conduct, he shall never force me to forget the regard which this country owes to him for the writings which he has left upon record as an inheritance to our most distant posterity. After the gratitude which we owe to God for the divine gifts of reason and understanding, our next thanks are due to those from the fountains of whose enlightened minds they are fed and fructified. But pleading, as I do, the cause of freedom of opinions, I shall not give offence by remarking that this great author has been thought to have changed some of his: and, if Thomas Paine had not thought so, I should not now be addressing you, because the book which is my subject would never have been written. Who may be right and who in the wrong, in the contention of doctrines, I have repeatedly disclaimed to be the question. I can only say that Mr. Paine may be right THROUGHOUT, but that Mr. Burke CANNOT. Mr. Paine has been UNIFORM in *his* opinions, but Mr. Burke HAS NOT. Mr. Burke can only be right in part; but, should Mr. Paine be even mistaken in the whole, still I am not removed from the principle of his defence. My defence has

nothing to do with the rectitude of his doctrines. I admit Mr. Paine to be a republican : you shall soon see what made him one. I do not seek to shade or qualify his attack upon our constitution ; I put my defence on no such matter. He undoubtedly means to declare it to be defective in its forms, and contaminated with abuses which, in his judgment, will, one day or other, bring on the ruin of us all. It is in vain to mince the matter ; this is the scope of his work. But still, if it contain no attack upon the King's Majesty, nor upon any other LIVING MAGISTRATE ; if it excite to no resistance to magistracy, but, on the contrary, if it even studiously inculcate obedience, then, whatever may be its defects, the question continues as before, and ever must remain, an unmixed question of the liberty of the press. I have therefore considered it as no breach of professional duty, nor injurious to the cause I am defending, to express my own admiration of the real principles of our constitution,—a constitution which I hope may never give way to any other,—a constitution which has been productive of many benefits, and which will produce many more hereafter, if we have wisdom enough to pluck up the weeds that grow in the richest soils and amongst the brightest flowers. I agree with the merchants of London, in a late declaration, that the English Government is equal to the reformation of its own abuses ; and, as an inhabitant of the city, I would have signed it, if I had known, *of my own knowledge*, the facts recited in its preamble. But abuses the English constitution unquestionably has, which call loudly for reformation, the existence of which has been the theme of our greatest statesmen, which have too plainly formed the principles of the defendant, and may have led to the very conjuncture which produced his book.

Gentlemen, we all but too well remember the calamitous situation in which our country stood but a few years ago—a situation which no man can look back upon without horror, nor feel himself safe from relapsing into again, while the causes remain which produced it. The event I allude to you must know to be the American War, and the still existing causes of it, the corruptions of this Government. In those days it was not thought virtue by the patriots of England to conceal the existence of them from the people ; but then, as now, authority condemned them as disaffected subjects, and defeated the ends they sought by their promulgation.

Hear the opinion of Sir George Saville—not his speculative opinion concerning the structure of our Government in the *abstract*, but his opinion of the settled abuses which prevailed in *his own time*, and which continue at *this moment*. But first let me remind you who Sir George Saville was. I fear we shall hardly look upon his like again. How shall I describe him to you ? In my own words I cannot. I was lately commended by Mr. Burke in the House of Commons for strengthening my own language by an

appeal to Dr. Johnson. Were the honourable gentleman present at this moment, he would no doubt doubly applaud my choice in resorting to *his own works* for the description of Sir George Saville.

"His fortune is among the largest; a fortune which, wholly unencumbered as it is, without one single charge from luxury, vanity, or excess, sinks under the benevolence of its dispenser. This private benevolence, expanding itself into patriotism, renders his whole being the estate of the public, in which he has not reserved a *peculium* for himself of profit, diversion, or relaxation. During the session, the first in and the last out of the House of Commons, he passes from the senate to the camp; and seldom seeing the seat of his ancestors, he is always in Parliament to serve his country, or in the field to defend it."

It is impossible to ascribe to such a character any principle but patriotism, when he expressed himself as follows:—

"I return to you baffled and dispirited, and I am sorry that truth obliges me to add, with hardly a ray of hope of seeing any change in the miserable course of public calamities.

"On this melancholy day of account, in rendering up to you my trust, I deliver to you your share of a country maimed and weakened; its treasure lavished and misspent; its honours faded; and its conduct the laughing-stock of Europe: our nation in a manner without allies or friends, except such as we have hired to destroy our fellow-subjects, and to ravage a country in which we once claimed an invaluable share. I return to you some of your principal privileges impeached and mangled. And, lastly, I leave you, as I conceive, at this hour and moment, fully, effectually, and absolutely under the discretion and power of a military force, which is to act without waiting for the authority of the civil magistrates.

"Some have been accused of exaggerating the public misfortunes, nay, of having endeavoured to help forward the mischief, that they might afterwards raise discontents. I am willing to hope, that neither my temper nor my situation in life will be thought naturally to urge me to promote misery, discord, or confusion, or to exult in the subversion of order, or in the ruin of property. I have no reason to contemplate with pleasure the poverty of our country, the increase of our debts and of our taxes, or the decay of our commerce. Trust not, however, to my report: reflect, compare, and judge for yourselves.

"But, under all these disheartening circumstances, I could yet entertain a cheerful hope, and undertake again the commission with alacrity, as well as zeal, if I could see any effectual steps taken to remove the original cause of the mischief. 'Then would there be a hope.'

"But, till the purity of the constituent body, and thereby that of the representative, be restored, there is NONE.

"I gladly embrace this most public opportunity of delivering my sentiments, not only to all my constituents, but to those likewise not my constituents, whom yet, in the large sense, I represent, and am faithfully to serve.

"I look upon restoring election and representation in some degree (for I expect no miracles) to their original purity, to be that, without which all other efforts will be vain and ridiculous.

"If something be not done, you may, indeed, retain the OUTWARD FORM of your constitution, but not the POWER thereof."

Such were the words of that great good man, lost with those of many others of his time, and his fame, as far as power could hurt it, put in the shade along with them. The consequences we have all seen and felt: America, from an obedient, affectionate colony, became an independent nation; and two millions of people, nursed in the very lap of our monarchy, became the willing subjects of a republican constitution.

Gentlemen, in that great and calamitous conflict Edmund Burke and Thomas Paine fought in the same field of reason together, but with very different successes. Mr. Burke spoke to a Parliament in England, such as Sir George Saville describes it, having no ears but for sounds that flattered its corruptions. Mr. Paine, on the other hand, spoke TO A PEOPLE, reasoned with them, told them that they were bound by no subjection to any sovereignty, further than their own benefit connected them; and by these powerful arguments prepared the minds of the American people for that GLORIOUS, JUST, and HAPPY revolution.

Gentlemen, I have a right to distinguish it by these epithets, because I aver that at this moment there is as sacred a regard to property, as inviolable a security to all the rights of individuals, lower taxes, fewer grievances, less to deplore, and more to admire, in the constitution of America, than that of any other country under heaven. I wish indeed to except our own, but I cannot even do that, till it shall be purged of those abuses which, though they obscure and deform the surface, have not as yet, *thank God*, destroyed the vital parts.

Why then is Mr. Paine to be calumniated and reviled, because, out of a people consisting of near three millions, *he alone* did not remain attached *in opinion* to a monarchy? Remember that all the blood which was shed in America, and to which he was for years a melancholy and indignant witness, was shed by the authority of the Crown of Great Britain, under the influence of a Parliament such as Sir George Saville has described it, and such as Mr. Burke himself will be called upon by and by in more glowing colours to paint it. How, then, can it be wondered at, that Mr. Paine should return to this country in his heart a republican? Was he not equally a republican when he wrote "Common Sense"? Yet that volume has been sold without restraint or prosecution in

every shop in England ever since, and which nevertheless (*I appeal to the book, which I have in Court, and which is in everybody's hands*) contains every one principle of government, and every abuse in the British constitution, which is to be found in "The Rights of Man." Yet Mr Burke himself saw no reason to be alarmed at that publication, nor to cry down its contents, even when America, which was swayed by it, was in arms against the Crown of Great Britain. You shall hear his opinion of it in his Letter to the Sheriffs of Bristol, pages 33 and 34.

"The *Court Gazette* accomplished what the abettors of independence had attempted in vain. When that disingenuous compilation, and strange medley of railing and flattery, was adduced as a proof of the united sentiments of the people of Great Britain, there was a great change throughout all America. The tide of popular affection, which had still set towards the parent country, began immediately to turn, and to flow with great rapidity in a contrary course. Far from concealing these wild declarations of enmity, the author of the celebrated pamphlet * which prepared the minds of the people for independence, insists largely on the multitude and the spirit of these addresses; and draws an argument from them which (if the fact were as he supposes) must be irresistible; for I never knew a writer on the theory of government so partial to authority as not to allow that the hostile mind of the rulers to their people did fully justify a change of government; nor can any reason whatever be given why one people should voluntarily yield any degree of pre-eminence to another, but on a supposition of great affection and benevolence towards them. Unfortunately, your rulers, trusting to other things, took no notice of this great principle of connexion."

Such were the sentiments of Mr. Burke; but there is a time, it seems, for all things.

Gentlemen, the consequences of this mighty revolution are too notorious to require illustration. No audience would sit to *hear* (what everybody has *seen* and *felt*), how the independence of America notoriously produced, not by remote and circuitous effect, but directly and palpably, the revolutions which now agitate Europe, and which portend such mighty changes over the face of the earth. Let governments take warning. The revolution in France was the consequence of her incurably corrupt and profligate Government. God forbid that I should be thought to lean, by this declaration, upon her unfortunate monarch, bending perhaps at this moment under afflictions which my heart sinks within me to think of: when I speak with detestation of the former politics of the French court, I fasten as little of them upon that fallen and unhappy prince, as I impute to our gracious Sovereign the corruptions of our own. I desire, indeed, in the distinctest manner,

* "Common Sense," written by Thomas Paine in America.

to be understood that I mean to speak of His Majesty, not only with that obedience and duty which I owe to him as a subject, but with that justice which I think is due to him from all men who examine his conduct either in public or private life.

Gentlemen, Mr. Paine happened to be in England when the French Revolution took place; and notwithstanding what he must be supposed and allowed from his own history to have felt upon such a subject, he remained wholly silent and inactive. The people of this country, too, appeared to be indifferent spectators of the animating scene. They saw, without visible emotion, despotism destroyed, and the King of France, by his own consent, become the first magistrate of a free people. Certainly, at least, it produced none of those effects which are so deprecated by Government at present; nor, most probably, ever would, if it had not occurred to the celebrated person whose name I must so often mention voluntarily to provoke the subject,—a subject which, if dangerous to be discussed, ~~HE~~ should not have led to the discussion of; for surely it is not to be endured that any private man shall publish a creed for a whole nation: shall tell us that we are not to think for ourselves, shall impose his own fetters upon the human mind, shall dogmatise at discretion, and yet that no man shall sit down to answer him without being guilty of a libel. I assert that if it be a libel to mistake our constitution, to attempt the support of it by means that tend to destroy it, and to choose the most dangerous season for doing so, Mr. Burke is that libeller; but not therefore the object of a criminal prosecution: whilst I am defending the motives of one man, I have neither right nor disposition to criminate the motives of another. All I contend for is a fact that cannot be controverted, viz., that *this officious interference was the origin of Mr. Paine's book*. I put my cause upon its being the origin of it—the avowed origin—as will abundantly appear from the introduction and preface to both parts, and from the whole body of the work; nay, from the very work of Mr. Burke himself, to which both of them are answers.

For the history of that celebrated work, I appeal to itself.

When the French Revolution had arrived at some of its early stages, a few, and but a few, persons (not to be named when compared with the nation) took a visible interest in these mighty events—an interest well worthy of Englishmen. They saw a pernicious system of government which had led to desolating wars, and had been for ages the scourge of Great Britain, giving way to a system which seemed to promise harmony and peace amongst nations. They saw this with virtuous and peaceable satisfaction; and a reverend divine,* eminent for his eloquence, recollecting that the issues of life are in the hands of God, saw no profaneness in mixing the subject with public thanksgiving, by reminding the

* Dr. Price.

people of this country of their own glorious deliverance in former ages. It happened, also, that a society of gentlemen, France being then a neutral nation, and her own monarch swearing almost daily upon her altars to maintain the new constitution, thought they infringed no law by sending a general congratulation. Their numbers, indeed, were very inconsiderable; so much so, that Mr. Burke, with more truth than wisdom, begins his volume with a sarcasm upon their insignificance:

"Until very lately he had never heard of such a club. It certainly never occupied a moment of his thoughts; nor, he believed, those of any person out of their own set."

Why then make their proceedings the subject of alarm throughout England? There had been no prosecution against them, nor any charge founded even upon suspicion of disaffection against any of their body. But Mr. Burke thought it was reserved for his eloquence to whip these curs of faction to their kennels. How he has succeeded, I appeal to all that has happened since the introduction of his schism in the British Empire, by giving to the King, whose title was questioned by no man, a title which it is His Majesty's most solemn interest to disclaim.

After having, in his first work, lashed Dr. Price in a strain of eloquent irony for considering the monarchy to be elective, which he could not but know Dr. Price, *in the literal sense of election*, neither did or could possibly consider it, Mr. Burke published a second treatise; in which, after reprinting many passages from Mr. Paine's former work, he ridicules and denies the supposed right of the people to change their governments, in the following words:—

"The French Revolution, *say they*" (speaking of the English societies), "was the act of the majority of the people; and if the majority of any other people, *the people of England, for instance*, wish to make the same change, they have the same right; just the same undoubtedly; that is, none *at all*."

And then, after speaking of the subserviency of will to duty (in which I agree with him), he, in a substantive sentence, maintains the same doctrine, thus:—

"The constitution of a country being once settled upon some compact, tacit or expressed, there is no power existing of force to alter it, without the breach of the covenant, or the consent of all the parties. Such is the nature of a contract."

So that if reason, or even revelation itself, were now to demonstrate to us, that our constitution was mischievous in its effects,—if, to use Mr. Attorney-General's expression, we had been insane for the many centuries we have supported it; yet that still, if the King had not forfeited his title to the Crown, nor the Lords their privileges, *the universal voice of the people of England* could not build up a new government upon a legitimate basis.

Passing by, for the present, the absurdity of such a proposition,

and supposing it could, beyond all controversy, be maintained; for Heaven's sake, let wisdom never utter it! Let policy and prudence for ever conceal it! If you seek the stability of the English Government, rather put the book of Mr. Paine, which calls it bad, into every hand in the kingdom, than doctrines which bid human nature rebel even against that which is the best. Say to the people of England, Look at your constitution, there it lies before you—the work of your pious fathers,—handed down as a sacred deposit from generation to generation,—the result of wisdom and virtue,—and its parts cemented together with kindred blood: there are, indeed, a few spots upon its surface; but the same principle which reared the structure will brush them all away: You may preserve your Government—you may destroy it. To such an address, what would be the answer? A chorus of the nation—YES, WE WILL PRESERVE IT. But say to the *same* nation, even of the very *same* constitution, It is yours, such as it is, for better or for worse;—it is strapped upon your backs, to carry it as beasts of burden,—you have no jurisdiction to cast it off. Let *this* be your position, and you instantly raise up (I appeal to every man's consciousness of his own nature) a spirit of uneasiness and discontent. It is this spirit alone that has pointed most of the passages arraigned before you.

But let the prudence of Mr. Burke's argument be what it may, the argument itself is untenable. His Majesty undoubtedly was not elected to the throne. No man can be supposed, in the teeth of fact, to have contended it;—but did not the people of England elect King William, and break the hereditary succession?—and does not His Majesty's title grow out of that election? It is one of the charges against the defendant, his having denied the Parliament which called the Prince of Orange to the throne to have been a legal convention of the whole people; and is not the very foundation of that charge that it *was* such a legal convention, and that it was intended to be so? And *if it was so*, did not the people then confer the Crown upon King William without any regard to hereditary right? Did they not cut off the Prince of Wales, who stood directly in the line of succession, and who had incurred no personal forfeiture? Did they not give their deliverer an estate in the Crown totally new and unprecedented in the law or history of the country? And, lastly, might they not, by the same authority, have given the royal inheritance to the family of a stranger? Mr. Justice Blackstone, in his Commentaries, asserts in terms *that they might*; and ascribes their choice of King William, and the subsequent limitations of the Crown, not to want of jurisdiction, but to their true origin, to prudence and discretion in not disturbing a valuable institution further than public safety and necessity dictated.

The English Government stands then on this public consent, the true root of all governments. And I agree with Mr. Burke that, while it is well administered, it is not in the power of factions or

libels to disturb it ; though, when ministers are in fault, they are sure to set down all disturbances to these causes. This is most justly and eloquently exemplified in his own "Thoughts on the Cause of the Present Discontents," pages 5 and 6 :—

"Ministers contend that no adequate provocation has been given for so spreading a discontent, our affairs having been conducted throughout with remarkable temper and consummate wisdom. The wicked industry of some libellers, joined to the intrigues of a few disappointed politicians, have, in their opinion, been able to produce this unnatural ferment in the nation.

"Nothing, indeed, can be more unnatural than the present convulsions of this country, if the above account be a true one. I confess I shall assent to it with great reluctance, and only on the compulsion of the clearest and firmest proofs ; because their account resolves itself into this short but discouraging proposition : 'That we have a very good Ministry, but that we are a very bad people ;' that we set ourselves to bite the hand that feeds us : and, with a malignant insanity, oppose the measures, and ungratefully vilify the persons of those whose sole object is our own peace and prosperity. If a few puny libellers, acting under a knot of factious politicians, without virtue, parts, or character (for such they are constantly represented by these gentlemen), are sufficient to excite this disturbance, very perverse must be the disposition of that people, amongst whom such a disturbance can be excited by such means."

He says true : never were serious disturbances excited by such means !

But to return to the argument. Let us now see how the rights of the people stand upon authorities. Let us examine whether this great source of government insisted on by Thomas Paine, be not maintained by persons on whom my friend will find it difficult to fasten the character of libellers.

I shall begin with the most modern author on the subject of government—whose work lies spread out before me, as it often does at home for my delight and instruction in my leisure hours. I have also the honour of his personal acquaintance. He is a man, perhaps more than any other, devoted to the real constitution of this country, as will be found throughout his valuable work ; he is a person, besides, of great learning, which enabled him to infuse much useful knowledge into my learned friend now near me, who introduced me to him.* I speak of Mr. Paley, Archdeacon of Carlisle, and of his work entitled "The Principles of Political and Moral Philosophy," in which he investigates the first principles of all governments—a discussion not thought dangerous *till lately*. I hope we shall soon get rid of this ridiculous panic.

Mr. Paley professes to think of governments what the Christian religion was thought of by its first teachers—"If it be of God, it

* Lord Ellenborough, then Mr. Law.

will stand;" and he puts the duty of obedience to them upon free will and moral duty. After dissenting from Mr. Locke as to the origin of governments in compact, he says—

"Wherefore, rejecting the intervention of a compact as unfounded in its principle, and dangerous in the application, we assign for the only ground of the subjects' obligation, **THE WILL OF GOD, AS COLLECTED FROM EXPEDIENCY.**

"The steps by which the argument proceeds are few and direct. 'It is the will of God that the happiness of human life be promoted : '—this is the first step, and the foundation, not only of this, but of every moral conclusion. 'Civil society conduces to that end : '—this is the second proposition. 'Civil societies cannot be upheld, unless, in each, the interest of the whole society be binding upon every part and member of it :—this is the third step, and conducts us to the conclusion, namely,—'That, so long as the interest of the whole society requires it (that is, so long as the established government cannot be resisted or changed without public inconveniency), it is the will of God (which will universally determines our duty) that the established government be obeyed,'—*and no longer.*

"But who shall judge of this? We answer, '*Every man for himself.*' In contentions between the sovereign and the subject, the parties acknowledge no common arbitrator; and it would be absurd to commit the decision to those whose conduct has provoked the question, and whose own interest, authority, and fate are immediately concerned in it. The danger of error and abuse is no objection to the rule of expediency, because every other rule is liable to the same or greater; and every rule that can be propounded upon the subject (like all rules which appeal to or bind the conscience), must, in the application, depend upon private judgment. It may be observed, however, that it ought equally to be accounted the exercise of a man's private judgment, whether he determines by reasonings and conclusions of his own, or submits to be directed by the advice of others, provided he be free to choose his guide."

He then proceeds in a manner rather inconsistent with the principles entertained by my learned friend in his opening to you :—

"No usage, law, or authority whatever, is so binding, that it need or ought to be continued, when it may be changed with advantage to the community. The family of the prince—the order of succession—the prerogative of the crown—the form and parts of the legislature—together with the respective powers, office, duration, and mutual dependency of the several parts; are all only so many laws, mutable, like other laws, whenever expediency requires, either by the ordinary act of the legislature, or, if the occasion deserve it, **BY THE INTERPOSITION OF THE PEOPLE.**"

No man can say that Mr. Paley intended to diffuse discontent by this declaration. He must, therefore, be taken to think with me, that freedom and affection, and the sense of advantage, are the best

and the only supports of government. On the same principle he then goes on to say—"These points are wont to be approached with a kind of awe; they are represented to the mind as principles of the constitution, settled by our ancestors; and, being settled, to be no more committed to innovation or debate; as foundations never to be stirred; as the terms and conditions of the social compact, to which every citizen of the state has engaged his fidelity by virtue of a promise which he cannot now recall. Such reasons have no place in our system."

These are the sentiments of this excellent author; and there is no part of Mr. Paine's work, from the one end of it to the other, that advances any other proposition.

But the Attorney-General will say these are the grave speculative opinions of a friend to the English Government, whereas Mr. Paine is its professed enemy; what then? The principle is, that every man, while he obeys the laws, is to think for himself, and to communicate what he thinks. The very ends of society exact this licence, and the policy of the law, in its provisions for its security, has tacitly sanctioned it. The real fact is, that writings against a free and well-proportioned government need not be guarded against by laws. They cannot often exist, and never with effect. The just and lawful principles of society are rarely brought forward but when they are insulted and denied, or abused in practice. Mr. Locke's Essay on Government we owe to Sir Robert Filmer, as we owe Mr. Paine's to Mr. Burke; indeed, between the arguments of Filmer and Burke I see no essential difference, since it is not worth disputing whether a king exists by *divine* right, or by *indissoluble human* compact, if he exists whether we will or no. If his existence be without our consent, and is to continue without benefit, it matters not whether his title be from God or from man.

That his title is from man, and from every generation of man, without regard to the determination of former ones, hear from Mr. Locke: "*All men,*" say they (i.e., Filmer and his adherents), "*are BORN under government, and therefore they cannot be at liberty to begin a new one. Every one is born a subject to his father, or his prince, and is therefore under the perpetual tie of subjection and allegiance.*" It is plain, mankind never owned nor considered any such natural *subjection that they were born in*, to one or the other, that tied them, without their own consents, to a subjection to them and their heirs."

"It is true, that whatever engagements or promises any one has made for himself, he is under the obligation of them, but cannot, by any compact whatsoever, bind his children or posterity; for his son, when a man, being altogether as free as the father, any *act of the father can no more give away the liberty of the son* than it can of anybody else."

So much for Mr. Locke's opinion of the rights of man. Let us

now examine his ideas of the supposed danger of trusting him with them.

"Perhaps it will be said that—the people being ignorant, and always discontented—to lay the foundation of government in the unsteady opinion and uncertain humour of the people, is to expose it to certain ruin ; and no government will be able long to subsist if the people may set up a new legislature whenever they take offence at the old one. To this, I answer, Quite the contrary ; people are not so easily got out of their old forms as some are apt to suggest ; they are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed to ; and if there be any original defects, or adventitious ones, introduced by time or corruption, it is not an easy thing to be changed, even when all the world sees there is an opportunity for it. This slowness and aversion in the people to quit their old constitutions has, in the many revolutions which have been seen in this kingdom in this and former ages, still kept us to, or, after some interval of fruitless attempts, still brought us back again, to our old legislative of kings, lords, and commons ; and whatever provocations have made the crown be taken from some of our princes' heads, they never carried the people so far as to place it in another line."

Gentlemen, I wish I had strength to go on with all that follows ; but I have read enough, not only to maintain the true principles of government, but to put to shame the narrow system of distrusting the people.

It may be said that Mr. Locke went great lengths in his positions to beat down the contrary doctrine of divine right, which was then endangering the new establishment. But that cannot be objected to David Hume, who maintains the same doctrine. Speaking of the Magna Charta in his History, vol. ii., page 88, he says, "It must be confessed that the former articles of the great charter contain such mitigations and explanations of the feudal law as are reasonable and equitable ; and that the latter involve all the chief outlines of a legal government, and provide for the equal distribution of justice, and free enjoyment of property ; the great object for which political society was founded by men, *which the people have a perpetual and unalienable right to recall ; and which no time, nor precedent, nor statute, nor positive institution, ought to deter them from keeping ever uppermost in their thoughts and attention.*"

These authorities are sufficient to rest on ; yet I cannot omit Mr. Burke himself, who is, if possible, still more distinct on the subject. Speaking not of the ancient people of England, but of colonies planted almost within our memories, he says, "If there be one fact in the world perfectly clear, it is this, that the disposition of the people of America is wholly averse to any other than a free government ; and this is indication enough to any honest statesman, how

he ought to adapt whatever power he finds in his hands to their case. If any ask me what a free government is, I answer, THAT IT IS WHAT THE PEOPLE THINK SO ; AND THAT THEY, AND NOT I, ARE THE NATURAL, LAWFUL, AND COMPETENT JUDGES OF THIS MATTER. If they practically allow me a greater degree of authority over them than is consistent with any correct ideas of perfect freedom, I ought to thank them for so great a trust, and not to endeavour to prove from thence, that they have reasoned amiss ; and that, having gone so far, by analogy, they must hereafter have no enjoyment but by my pleasure."

Gentlemen, all that I have been stating hitherto has been only to show that there is not that *novelty* in the opinions of the defendant as to lead you to think he does not *bond fide* entertain them, much less when connected with the history of his life, which I therefore brought in review before you. But still the great question remains unargued : Had he a right to promulgate these opinions ? If he entertained them, I shall argue that he had ; and although my arguments upon the liberty of the press may not to-day be honoured with your or the Court's approbation, I shall retire not at all disheartened, consoling myself with the reflection that a season may arrive for their reception. The most essential liberties of mankind have been but slowly and gradually received ; and so very late, indeed, do some of them come to maturity, that, notwithstanding the Attorney-General tells you that the very question I am now agitating is most peculiarly for *your* consideration, AS A JURY, under our ANCIENT constitution ; yet I must remind both YOU and HIM that your jurisdiction to consider and deal with it at all in judgment is but A YEAR OLD. Before that late period I ventured to maintain this very RIGHT OF A JURY over the question of libel under the same *ancient* constitution (I do not mean before the noble Judge now present, for the matter was gone to rest in the courts long before he came to sit where he does, but) before a noble and reverend magistrate of the most exalted understanding, and of the most uncorrupted integrity.* He treated me not with contempt, indeed, for of that his nature was incapable, but he put me aside with indulgence, as you do a child while it is lisping its prattle out of season ; and if this cause had been tried *then*, instead of *now*, the defendant must have been instantly convicted on the proof of the publication, whatever *you* might have thought of his case. Yet I have lived to see it resolved, by an almost unanimous vote of the whole Parliament of England, that I had all along been in the right. If this be not an awful lesson of caution concerning opinions, where are such lessons to be read ?

Gentlemen, I have insisted, at great length, upon the origin of governments, and detailed the authorities which you have heard upon the subject, because I consider it to be not only an essential

* Earl of Mansfield.

support, but the very foundation of the liberty of the press. If Mr. Burke be right in his principles of government, I admit that the press, in my sense of its freedom, ought not to be free, *nor free in any sense at all*; and that all addresses to the people upon the subject of government, and all speculations of amendment, of what kind or nature soever, are illegal and criminal, since, if the people have, without possible recall, delegated all their authorities, they have no jurisdiction to act, and therefore none to think or write upon such subjects; and it would be a libel to arraign government, or any of its acts, before those that have no jurisdiction to correct them. But, on the other hand, as it is a settled rule in the law of England that the subject may always address a competent jurisdiction, no legal argument can shake the freedom of the press, in my sense of it, if I am supported in my doctrines concerning the great unalienable right of the people, to reform or to change their governments.

It is because the liberty of the press resolves itself into this great issue that it has been, in every country, the last liberty which subjects have been able to wrest from power. Other liberties are held *under* governments; but the liberty of opinion keeps GOVERNMENTS THEMSELVES in due subjection to their duties. This has produced the martyrdom of truth in every age, and the world has been only purged from ignorance with the innocent blood of those who have enlightened it.

Gentlemen, my strength and time are wasted, and I can only make this melancholy history pass like a shadow before you.

I shall begin with the grand type and example.

The universal God of nature, the Saviour of mankind, the Fountain of all light, who came to pluck the world from eternal darkness, expired upon a cross—the scoff of infidel scorn; and His blessed apostles followed Him in the train of martyrs. When He came in the flesh, He might have come like the Mahometan prophet, as a powerful sovereign, and propagated His religion with an unconquerable sword, which even now, after the lapse of ages, is but slowly advancing under the influence of reason over the face of the earth; but such a process would have been inconsistent with His mission, which ~~was~~ was to confound the pride, and to establish the universal rights of men. He came, therefore, in that lowly state which is represented in the gospel, and preached His consolations to the poor.

When the foundation of this religion was discovered to be invulnerable and immortal, we find political power taking the Church into partnership; thus began the corruptions, both of religion and civil power; and, hand in hand together, what havoc have they not made in the world?—ruling by ignorance and the persecution of truth; but this very persecution only hastened the revival of letters and liberty. Nay, you will find that in the exact propor-

tion that knowledge and learning have been beat down and fettered, they have destroyed the governments which bound them. The Court of Star Chamber, the first restriction of the press of England, was erected previous to all the great changes in the constitution. From that moment, no man could legally write without an imprimatur from the State ; but truth and freedom found their way with greater force through secret channels ; and the unhappy Charles, *unwarned by a free press*, was brought to an ignominious death. When men can freely communicate their thoughts and their sufferings, real or imaginary, their passions spend themselves in air, like gunpowder scattered upon the surface ; but, pent up by terrors, they work unseen, burst forth in a moment, and destroy everything in their course. Let reason be opposed to reason, and argument to argument, and every good government will be safe.

The usurper, Cromwell, pursued the same system of restraint in support of his government, and the end of it speedily followed.

At the restoration of Charles II. the Star Chamber Ordinance of 1637 was worked up into an Act of Parliament, and was followed up during that reign, and the short one that followed it, by the most sanguinary prosecutions. But what fact in history is more notorious than that this blind and contemptible policy prepared and hastened the Revolution ? At that great era these cobwebs were all brushed away. The freedom of the press was regenerated, and the country, ruled by its affections, has since enjoyed a century of tranquillity and glory. Thus I have maintained, by English history, that, in proportion as the press has been free, English government has been secure.

Gentlemen, the same important truth may be illustrated by great authorities. Upon a subject of this kind resort cannot be had to law cases. The ancient law of England knew nothing of such libels ; they began, and should have ended, with the Star Chamber. What writings are slanderous of *individuals* must be looked for where these prosecutions are recorded ; but upon *general* subjects we must go to *general* writers. If, indeed, I were to refer to obscure authors, I might be answered that my very authorities were libels, instead of justifications or examples ; but this cannot be said with effect of great men, whose works are classics in our language, taught in our schools, and repeatedly printed under the eye of Government.

I shall begin with the poet Milton, a great authority in all learning. It may be said, indeed, he was a republican, but that would only prove that republicanism is not incompatible with virtue. It may be said, too, that the work which I cite was written against previous licensing, which is not contended for to-day. But if every work were to be adjudged a libel which was adverse to the wishes of Government, or to the opinions of those who may compose it, the revival of a licenser would be a security to the

public. If I present my book to a magistrate appointed by law, and he rejects it, I have only to forbear from the publication. In the forbearance I am safe; and he too is answerable to law for the abuse of his authority. But, upon the argument of to-day, a man must print at his peril, without any guide to the principles of judgment upon which his work may be afterwards prosecuted and condemned. Milton's argument therefore applies, and was meant to apply, to every interruption to writing, which, while they oppress the individual, endanger the State.

"We have them not," says Milton, "that can be heard of, from any ancient state, or polity, or church, nor by any statute left us by our ancestors, elder or later, nor from the modern custom of any reformed city, or church abroad; but from the most anti-christian council, and the most tyrannous inquisition that ever existed. 'Till *then*, books were ever as freely admitted into the world as any other birth; *the issue of the brain was no more stifled than the issue of the womb*."

"To the pure all things are pure; not only meats and drinks, but all kind of knowledge, whether good or evil. The knowledge cannot defile, nor consequently the books, if the will and conscience be not defiled."

"Bad books serve in many respects to discover, to confute, to forewarn, and to illustrate. Whereof, what better witness can we expect I should produce than one of your own, now sitting in Parliament, the chief of learned men reputed in this land, *Mr. Selden*, whose volume of natural and national laws proves, not only by great authorities brought together, but by exquisite reasons and theorems almost mathematically demonstrative, that all opinions, YEA, ERRORS, known, read, and collated, are of main service and assistance toward the speedy attainment of what is truest."

"Opinions and understanding are not such wares as to be monopolised and traded in by tickets, and statutes, and standards. We must not think to make a staple commodity of all the knowledge in the land, to mark and license it like our broadcloth and our woolpacks."

"Nor is it to the common people less than a reproach; for if we be so jealous over them that we cannot trust them with an English pamphlet, what do we but censure them for a giddy, vicious, and ungrounded people; in such a sick and weak estate of faith and discretion as to be able to take nothing down but through the pipe of a licenser? That this is care or love of them we cannot pretend."

"Those corruptions which it seeks to prevent break in faster at doors which cannot be shut. To prevent men thinking and acting for themselves by restraints on the press is like to the exploits of that gallant man who thought to pound up the crows by shutting his park gate."

"This obstructing violence meets, for the most part, with an event utterly opposite to the end which it drives at. Instead of suppressing books, it raises them and invests them with a reputation. The punishment of wits enhances their authority, saith the Viscount St. Albans, and a forbidden writing is thought to be a certain spark of truth that flies up in the face of them who seek to tread it out."

He then adverts to his visit to the famous Galileo, whom he found and visited in the Inquisition, "for not thinking in astronomy with the Franciscan and Dominican monks." And what event ought more deeply to interest and affect us? THE VERY LAWS OF NATURE were to bend under the rod of a licenser. This illustrious astronomer ended his life within the bars of a prison, because, in seeing the phases of Venus through his newly-invented telescope, he pronounced that she shone with borrowed light, and from the sun as the centre of the universe. This was the *mighty crime*, the placing the sun in the centre: that sun which now inhabits it upon the foundation of mathematical truth, which enables us to traverse the pathless ocean, and to carry our line and rule amongst other worlds, which, but for Galileo, we had never known, perhaps even to the recesses of an infinite and eternal God.

Milton then, in his most eloquent address to the Parliament, puts the liberty of the press on its true and most honourable foundation:—

"Believe it, Lords and Commons, they who counsel ye to such a suppressing of books, do as good as bid you suppress yourselves, and I will soon show how.

"If it be desired to know the immediate cause of all this free writing and free speaking, there cannot be assigned a truer than your own mild, and free, and humane government. It is the liberty, Lords and Commons, which your own valorous and happy counsels have purchased us; liberty, which is the nurse of all great wits. This is that which hath rarefied and enlightened our spirits like the influence of heaven. This is that which hath enfranchised, enlarged, and lifted up our apprehensions degrees above themselves. Ye cannot make us now less capable, less knowing, less eagerly pursuing the truth, unless ye first make yourselves that made us so less the lovers, less the founders, of our true liberty. We can grow ignorant again, brutish, formal, and slavish, as ye found us; but you then must first become that which ye cannot be, oppressive, arbitrary, and tyrannous, as they were from whom ye have freed us. That our hearts are now more capacious, our thoughts now more erected to the search and expectation of greatest and exactest things, is the issue of your own virtue propagated in us. Give me the liberty to know, to utter, and to argue freely, according to conscience, above all liberties."

Gentlemen, I will yet refer you to another author, whose opinion

you may think more in point, as having lived in our own times, and as holding the highest monarchical principles of government. I speak of Mr. Hume, who, nevertheless, considers that this liberty of the press extends not only to abstract speculation, but to keep the public on their guard against all the acts of their Government.

After showing the advantages of a monarchy to public freedom, provided it is duly controlled and watched by the popular part of the constitution, he says, "These principles account for the great liberty of the press in these kingdoms, beyond what is indulged in any other Government. It is apprehended that arbitrary power would steal in upon us were we not careful to prevent its progress, and were there not an easy method of conveying the alarm from one end of the kingdom to the other. *The spirit of the people must frequently be roused in order to curb the ambition of the Court,* and the dread of rousing this spirit must be employed to prevent that ambition. Nothing is so effectual to this purpose as the liberty of THE PRESS, by which all the learning, wit, and genius of the nation may be employed on the side of freedom, and every one be animated to its defence. *As long, therefore, as the republican part of our Government can maintain itself against the monarchical, it will naturally be careful to keep the press open, as of importance to its own preservation.*"

There is another authority contemporary with the last, a splendid speaker in the Upper House of Parliament, and who held during most of his time high offices under the King. I speak of the Earl of Chesterfield, who thus expressed himself in the House of Lords:—"One of the greatest blessings, my Lords, we enjoy is liberty; but every good in this life has its alloy of evil. Licentiousness is the alloy of liberty, it is"—

Lord KENYON. Doctor Johnson claims to pluck that *feather* from Lord Chesterfield's wing. He speaks, I believe, of the eye of the political body.

Mr. ERSKINE. My Lord, I am happy that it is admitted to be a feather. I have heard it said that Lord Chesterfield borrowed that which I was just about to state, and which his Lordship has anticipated.

Lord KENYON. That very speech which did Lord Chesterfield so much honour is supposed to have been written by Doctor Johnson.

Mr. ERSKINE. Gentlemen, I believe it was so, and I am much obliged to his Lordship for giving me a far higher authority for my doctrine. For though Lord Chesterfield was a man of great wit, he was undoubtedly far inferior in learning, and, what is more to the purpose, in *monarchical* opinion, to the celebrated writer to whom my Lord has now delivered the work by his authority. Doctor Johnson then says, "One of the greatest blessings we enjoy, one of the greatest blessings a people, my Lords, can enjoy, is

liberty; but every good in this life has its alloy of evil. Licentiousness is the alloy of liberty. It is an ebullition, an excrescence; it is a speck upon the eye of the political body, but which I can never touch but with a gentle, with a trembling hand, lest I destroy the body, lest I injure the eye upon which it is apt to appear.

"There is such a connexion between licentiousness and liberty, that it is not easy to correct the one without dangerously wounding the other: it is extremely hard to distinguish the true limit between them: like a changeable silk, we can easily see there are two different colours, but we cannot easily discover where the one ends, or where the other begins."

I confess I cannot help agreeing with this learned author. THE DANGER OF TOUCHING THE PRESS IS THE DIFFICULTY OF MARKING ITS LIMITS. My learned friend, who has just gone out of Court, has drawn no line, and unfolded no principle. He has not told us, if *this* book is condemned, *what* book may be written. If I may not write against the existence of a monarchy, and recommend a republic, may I write against any part of the Government? May I say that we should be better without a House of Lords, or a House of Commons, or a Court of Chancery, or any other given part of our establishment? Or if, as has been hinted, a work may be libellous for stating even *legal* matter with *sarcastic* phrase, the difficulty becomes the greater, and the liberty of the press more impossible to define.

The same author, pursuing the subject, and speaking of the fall of Roman liberty, says, "But this sort of liberty came soon after to be called licentiousness; for we are told that Augustus, after having established his empire, restored order in Rome by restraining licentiousness. God forbid we should in this country have order restored or licentiousness restrained, at so dear a rate as the people of Rome paid for it to Augustus!"

"Let us consider, my Lords, that arbitrary power has seldom or never been introduced into any country at once. It must be introduced by slow degrees, and as it were step by step, lest the people should see its approach. The barriers and fences of the people's liberty must be plucked up one by one, and some plausible pretences must be found for removing or hoodwinking, one after another, those sentries who are posted by the constitution of a free country for warning the people of their danger. When these preparatory steps are once made, the people may then, indeed, with regret, see slavery and arbitrary power making long strides over their land; but it will be too late to think of preventing or avoiding the impending ruin.

"The stage, my Lords, and the press, are two of our out-sentries: if we remove them, if we hoodwink them, if we throw them in fetters, the enemy may surprise us."

Gentlemen, this subject was still more lately put in the justest

and most forcible light by a noble person high in the magistracy, whose mind is not at all tuned to the introduction of disorder by improper popular excesses: I mean Lord Loughborough, Chief Justice of the Court of Common Pleas. I believe I can answer for the correctness of my note, which I shall follow up with the opinion of another member of the Lords' House of Parliament, the present Earl Stanhope; or rather, I shall take Lord Stanhope first, as his Lordship introduces the subject by adverting to this argument of Lord Loughborough's. "If," says Lord Stanhope, "our boasted liberty of the press were to consist only in the liberty to write *in praise* of the constitution, this is a liberty enjoyed under many *arbitrary* governments. I suppose it would not be deemed quite an unpardonable offence, even by the Empress of Russia, if any man were to take into his head to write a panegyric upon the Russian form of government. Such a liberty as that might therefore properly be termed the *Russian liberty of the press*. But, the *English liberty of the press* is of a very different description: for, by the law of England, it is not prohibited to publish speculative works upon the constitution, whether *they contain praise or censure*" (*Lord Stanhope's Defence of the Libel Bill*).

You see, therefore, as far as the general principle goes, I am supported by the opinion of Lord Stanhope, for otherwise the noble Lord has written a libel himself, by exciting other people to write *whatever they may think*, be it good or evil, of the constitution of the country. As to the other high authority, Lord Loughborough, I will read what applies to this subject—"Every man," said Lord Loughborough, "may publish at his discretion his opinions concerning forms and systems of government. If they be wise and enlightening, the world will gain by them; if they be weak and absurd, they will be laughed at and forgotten; and if they be *bonâ fide*, they cannot be criminal, however ERRONEOUS. On the other hand, the purpose and the direction may give a different turn to writings whose common construction is harmless, or even meritorious. Suppose men, assembled in disturbance of the peace, to pull down mills or turnpikes, or to do any other mischief, and that a mischievous person should disperse among them an excitation to the planned mischief known to both writer and reader, *To your tents, O Israel*; that publication would be criminal;—not as a libel, not as an abstract writing, but as an act; and the act being the crime, *it must be stated as a fact extrinsic on the record*: for otherwise, a Court of Error could have no jurisdiction but over the *natural construction of the writing*; nor would the defendant have any notice of such matter at the trial, without a charge on the record. To give the jury cognisance of any matter beyond the construction of the writing, the averment should be, in the case as I have instanced, that certain persons were, as I have described, assembled; and that the publisher, intending to excite these persons

so assembled, wrote *so and so*. Here the crime is complete, and consists in an *overt act of wickedness evidenced by a writing.*"

In answer to all these authorities, the Attorney-General may say, that if Mr. Paine had written his observations with the views of those high persons, and under other circumstances, he would be protected and acquitted:—to which I can only answer, that no facts or circumstances attending his work are either *charged or proved*;—that you have *no jurisdiction* whatever, but over the natural construction of the work before you, and that I am therefore brought without a flaw to the support of the passages which are the particular subject of complaint.

Gentlemen, I am not unmindful how long I have already trespassed upon your patience; and, recollecting the nature of the human mind, and how much, for a thousand reasons, I have to struggle against at this moment, I shall not be disconcerted if any of you should appear anxious to retire from the pain of hearing me further. It has been said, in the newspapers, that my vanity has forwarded my zeal in this cause;—but I might appeal even to the authors of those paragraphs, whether a situation ever existed which vanity would have been fonder to fly from—the task of speaking against every known prepossession—with every countenance, as it were, planted and lifted up against me. But I stand at this bar to give to a criminal arraigned before it the defence which the law of the country entitles him to. If any of my arguments be indecent, or unfit for the Court to hear, the noble Judge presides to interrupt them: if all, or any of them, are capable of an answer, they will be answered: or if they be so unfounded in your own minds, who are to judge of them, as not to call for refutation, your verdict in a moment will overthrow all that has been said. We shall then have all discharged our duties. It is your unquestionable province to judge, and mine not less unquestionably to address your judgments.

When the noble Judge and myself were counsel for Lord George Gordon in 1781, it was not considered by that jury, nor imputed to us by anybody, that we were contending for the privileges of overawing the House of Commons, or recommending the conflagration of this city. I am doing the same duty now which *my Lord and I* then did in concert together; and, whatever may become of the cause, *I expect to be heard*; conscious that no just obloquy can be, or will in the end be, cast upon me for having done my duty in the manner I have endeavoured to perform it.—Sir, I shall name you presently.*

Gentlemen, I come now to observe on the passages selected by the information; and with regard to the first, I shall dispose of it in a moment.

* This expression was provoked by the conduct of one of the jury, which this rebuke put an end to.—Ed.

"All *hereditary* government is in its nature tyranny. An heritable crown, or an heritable throne, or by what other fanciful name such things may be called, have no other significant explanation than that mankind are heritable *property*. To *inherit* a government is to *inherit* the *people* as if they were flocks and herds."

And is it to be endured, says the Attorney-General, that the people of this country are to be told that they are driven like oxen or sheep? Certainly not. I am of opinion that a more dangerous doctrine cannot be instilled into the people of England. But who instils such a doctrine? I deny that it is instilled by Mr. Paine. When he maintains that hereditary monarchy inherits a people like flocks and herds, it is clear from the context (*which is kept out of view*), that he is combating the proposition in Mr. Burke's book, which asserts that the hereditary monarchy of England is fastened upon the people of England by *indissoluble compact*. Mr. Paine, on the contrary, asserts the King of England to be the *magistrate of the people*, existing by their consent, which is utterly incompatible with their being driven like herds. His argument, therefore, is this, and it retorts on his adversary: he says, Such a king as *you*, Mr. Burke, represent the King of England to be, inheriting the people by virtue of conquest, or of some compact, which, having once existed, cannot be dissolved while the original terms of it are kept, *is an inheritance like flocks and herds*. But I deny that to be the King of England's title. He is *the magistrate of the people*, and that title I respect. It is to your own imaginary King of England therefore, and not to His Majesty, that your unfounded innuendoes apply. It is the monarchs of Russia and Prussia, and all governments fastened upon unwilling subjects by hereditary indefeasible titles, who are stigmatised by Paine as inheriting the people like flocks. The sentence, therefore, must either be taken in the pure abstract, and then it is not only merely speculative, but the application of it to our own Government fails altogether, or it must be taken connected with the matter which constitutes the application, and then it is Mr. BURKE'S KING OF ENGLAND, and not His Majesty, whose title is denied.

I pass, therefore, to the next passage, which appears to be an extraordinary selection. It is taken at a leap from page 21 to page 47, and breaks in at the words "This convention." The sentence selected stands thus: "This convention met at Philadelphia in May 1787, of which General Washington was elected president. He was not at that time connected with any of the State governments, or with Congress. He delivered up his commission when the war ended, and since then had lived a private citizen.

"The convention went deeply into all the subjects; and having, after a variety of debate and investigation, agreed among themselves upon the several parts of a federal constitution, the next question was, the manner of giving it authority and practice.

"For this purpose, they did not, like a cabal of courtiers, send for a Dutch stadtholder, or a German elector; but they referred the whole matter to the sense and interest of the country."

This sentence, standing thus by itself, may appear to be a mere sarcasm on King William, upon those who effected the Revolution, and upon the Revolution itself, without any reasoning or deduction; but when the context and sequel are looked at and compared, it will appear to be a serious historical comparison between the Revolution effected in England in 1688, and the late one in America when she established her independence; and no man can doubt that his judgment on that comparison was sincere. But where is the libel on the Constitution? For whether King William was brought over here by the sincerest and justest motives of the whole people of England, each man acting for himself, or from the motives and through the agencies imputed by the defendant, it signifies not one farthing at this time of day to the establishment itself. Blackstone properly warns us not to fix our obedience or affection to the Government on the motives of our ancestors, or the rectitude of their proceedings, but to be satisfied with what is established. This is safe reasoning, and, for my own part, I should not be differently affected to the constitution of my country, which my own understanding approved, whether angels or demons had given it birth.

Do any of you love the Reformation the less because Henry the Eighth was the author of it? or because lust and poverty, not religion, were his motives? He had squandered the treasures of his father, and he preferred Anne Bullen to his queen: these were the causes which produced it. What then? Does that affect the purity of our reformed religion? Does it undermine its establishment, or shake the King's title, to the exclusion of those who held by the religion it had abolished? Will the Attorney-General affirm that I could be convicted of a libel for a whole volume of asperity against Henry the Eighth, merely because he effected the Reformation; and if not, why against King William, who effected the Revolution? Where is the line to be drawn? Are one, two, or three centuries to constitute the statute of limitation? Nay, do not our own historians detail this very cabal of courtiers from the records of our own country? If you will turn to Hume's History, volume the eighth, page 188, &c., &c., you will find that he states, at great length, the whole detail of intrigues which paved the way for the Revolution, and the interested coalition of parties which gave it effect.

But what of all this, concerning the motives of parties, which is recorded by Hume? The question is, *What is the thing brought about?*—Not, how it was brought about. If it stands, as Blackstone argues it, upon the consent of our ancestors, followed up by our own, no individual can withdraw his obedience. If he dislikes

the establishment, let him seek elsewhere for another; I am not contending for uncontrolled *conduct*, but for freedom of *opinion*.

With regard to what has been stated of the *Edwards* and *Henries*, and the other princes under which the author can only discover "*restrictions on power, but nothing of a constitution*:" surely my friend is not in earnest when he selects that passage as a libel.

Paine insists that there was no constitution under these princes, and that English liberty was obtained from usurped power by the struggles of the people. So say I. And I think it for the honour and advantage of the country that it should be known. Was there any freedom after the original establishment of the Normans by conquest? Was not the MAGNA CHARTA wrested from John by *open force of arms* at Runnymede? Was it not again re-enacted whilst menacing arms were in the hands of the people? Were not its stipulations broken through, and two-and-forty times re-enacted by Parliament, upon the firm demand of the people in the following reigns? I protest it fills me with astonishment to hear these truths brought in question.

I was formerly called upon, under the discipline of a college, to maintain them, and was rewarded for being thought to have successfully maintained that our present Constitution was by no means a remnant of Saxon liberty, nor any other institution of liberty, but the pure consequence of the oppression of the Norman tenures, which, spreading the spirit of freedom from one end of the kingdom to another, enabled our brave fathers, inch by inch, not to reconquer, *but for the first time to obtain* those privileges which are the unalienable inheritance of all mankind.

But why do we speak of the *Edwards* and *Henries*, when Hume himself expressly says, notwithstanding all we have heard to-day of the antiquity of our Constitution, that our monarchy was nearly absolute till the middle of last century. It is his "*Essay on the Liberty of the Press*," vol. i., page 15—

"All absolute governments, and such in a great measure was England till the middle of the last century, *notwithstanding the numerous panegyrics on ANCIENT English liberty*, must very much depend on the administration."

This is Hume's opinion; the conclusion of a grave historian from all that he finds recorded as the materials for history: and shall it be said that Mr. Paine is to be punished for writing to-day what was before written by another, who is now a distinguished classic in the language? All the verdicts in the world will not make such injustice palatable to an impartial public or to posterity.

The next passage arraigned is this (page 56): "The attention of the Government of England (for I rather choose to call it by this name than the English Government) appears, since its political

connexion with Germany, to have been so completely engrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purposes. Domestic concerns are neglected; and with respect to regular law, there is scarcely such a thing."

That the Government of this country has, in consequence of its connexion with the continent, and the continental wars which it has occasioned, been continually loaded with grievous taxes, no man can dispute: and I appeal to your justice, whether this subject has not been, for years together, the constant topic of unimproved declamation and grumbling.

As to what he says with regard to there hardly existing such a thing as regular law, he speaks *in the abstract* of the complexity of our system; he does not arraign the administration of justice *in its practice*. But with regard to criticisms and strictures on the general system of our Government, it has been echoed over and over again by various authors, and even from the pulpits, of our country. I have a sermon in court, written during the American war by a person of great eloquence and piety, in which he looks forward to an exemption from the intolerable grievances of our old legal system in the infant establishment of the New World:—

"It may be in the purposes of Providence, on yon western shores, to raise the bulwark of a purer reformation than ever Britain patronised: to found a less burdensome, more auspicious, stable, and incorruptible government than ever Britain has enjoyed; and to establish there a system of law more just and simple in its principles, less intricate, dubious, and dilatory in its proceedings, more mild and equitable in its sanctions, more easy and more certain in its execution; wherein no man can err through ignorance of what concerns him, or want justice through poverty or weakness, or escape it by legal artifice, or civil privileges, or interposing power; wherein the rule of conduct shall not be hidden or disguised in the language of principles and customs that died with the barbarism which gave them birth; wherein hasty formulas shall not dissipate the reverence that is due to the tribunals and transactions of justice; wherein obsolete prescripts shall not pervert, nor entangle, nor impede the administration of it, nor in any instance expose it to derision or to disregard; wherein misrepresentation shall have no share in deciding upon right and truth; and under which no man shall grow great by the wages of chicanery, or thrive by the quarrels that are ruinous to his employers."

This is ten times stronger than Mr. Paine; but who ever thought of prosecuting Mr. Cappe? *

In various other instances you will find defects in our jurisprudence pointed out and lamented, and not seldom by persons

* A late eminent and pious minister at York.

called upon by their situations to deliver the law in the seat of magistracy: therefore, the author's *general* observation does not appear to be that species of attack upon the magistracy of the country as to fall within the description of a libel.

With respect to the two Houses of Parliament, I believe I shall be able to show you that the very person who introduced this controversy, and who certainly is considered by those who now administer the government, as a man usefully devoted to maintain the constitution of the country in the present crisis, has himself made remarks upon these assemblies, that upon comparison you will think more severe than those which are the subject of the Attorney-General's animadversion. The passage in Mr. Paine runs thus:

"With respect to *the two Houses* of which the English Parliament is composed, they appear to be effectually influenced into one, and, as a legislature, to have no temper of its own. The minister, whoever he at any time may be, touches it as with an opium wand, and it sleeps obedience.

"But if we look at the distinct abilities of the two Houses, the difference will appear so great as to show the inconsistency of placing power where there can be no certainty of the judgment to use it. Wretched as the state of representation is in England, it is manhood compared with what is called the House of Lords; and so little is this nicknamed House regarded, that the people scarcely inquire at any time what it is doing. It appears also to be most under influence, and the furthest removed from the general interest of the nation."

The conclusion of the sentence, and which was meant by Paine as evidence of the previous assertion, the Attorney-General has omitted in the information and in his speech; it is this: "In the debate on engaging in the Russian and Turkish war, the majority in the House of Peers in favour of it was upwards of ninety, when in the other House, which is more than double its numbers, the majority was sixty-three."

The terms, however, in which Mr. Burke speaks of the House of Lords are still more expressive: "It is something more than a century ago since we voted the House of Lords useless. They have now voted themselves so, and the whole hope of reformation (*speaking of the House of Commons*) is cast upon us." This sentiment Mr. Burke not only expressed in his place in Parliament, where no man can call him to an account; but it has been since repeatedly printed amongst his works. Indeed his opinion of BOTH THE HOUSES OF PARLIAMENT, which I am about to read to you, was originally published as a separate pamphlet, and applied to the settled habitual abuses of these high assemblies. Remember, I do not use them as *argumenta ad hominem*, or *ad invidiam*, against the author; for if I did, it could be no defence of Mr.

Paine. But I use them as high authority, the work * having been the just foundation of substantial and lasting reputation. Would to God that any part of it were capable of being denied or doubted!

"Against the being of Parliament I am satisfied no designs have ever been entertained since the Revolution. Every one must perceive that it is strongly the interest of the Court to have some second cause interposed between the ministers and the people. The gentlemen of the House of Commons have an interest equally strong in sustaining the part of that intermediate cause. However they may hire out the *usufruct* of their voices, they never will part with the *fee and inheritance*. Accordingly, those who have been of the most known devotion to the will and pleasure of a Court, have at the same time been most forward in asserting an high authority in the House of Commons. *When they knew who were to use that authority, and how it was to be employed, they thought it never could be carried too far.* It must be always the wish of an unconstitutional statesman, that an House of Commons *who are entirely dependent upon him, should have every right of the people dependent upon their pleasure.* FOR IT WAS DISCOVERED THAT THE FORMS OF A FREE AND THE ENDS OF AN ARBITRARY GOVERNMENT, WERE THINGS NOT ALTOGETHER INCOMPATIBLE.

"The power of the Crown, almost dead and rotten as prerogative, has grown up anew, with much more strength and far less odium, under the name of influence. An influence which operates without noise and violence,—which converts the very antagonist into the instrument of power,—which contains in itself a perpetual principle of growth and renovation; and which the distresses and the prosperity of the country equally tend to augment, was an admirable substitute for a prerogative that, being only the offspring of antiquated prejudices, had moulded in its original stamina irresistible principles of decay and dissolution. The ignorance of the people is a bottom but for a temporary system; but the interest of active men in the state is a foundation perpetual and infallible."

Mr. Burke, therefore, in page 66, speaking of the same Court party, says:—

"Parliament was indeed the great object of all these politics, the end at which they aimed, as well as the INSTRUMENT by which they were to operate."

And pursuing the subject in page 70, proceeds as follows:—

"They who will not conform their conduct to the public good, and cannot support it by the prerogative of the Crown, have adopted a new plan. They have totally abandoned the shattered and old-fashioned fortress of Prerogative, and made a lodgment in

* Mr. Burke's "Thoughts on the Cause of the Present Discontents," published in 1775.

the stronghold of Parliament itself. If they have any evil design to which there is no ordinary legal power commensurate, they bring it into Parliament. *There the whole is executed from the beginning to the end; and the power of obtaining their object absolute; and the safety in the proceeding perfect; no rules to confine, nor after- reckonings to terrify.* For Parliament cannot with any great propriety punish others for things in which they themselves have been ACCOMPLICES. Thus its control upon the executory power is lost, because it is made to partake in every considerable act of government: *and impeachment, that great guardian of the purity of the constitution, is in danger of being lost even to the idea of it.*"

"Until this time, the opinion of the people, through the power of an Assembly, still in some sort popular, led to the greatest honours and emoluments in the gift of the Crown. Now the principle is reversed; and the favour of the Court is the only sure way of obtaining and holding those honours which ought to be IN THE DISPOSAL OF THE PEOPLE."

Mr. Burke, in page 100, observes with great truth, that the mischiefs he complained of did not at all arise from the monarchy, but from the Parliament, and that it was the duty of the people to look to it. He says, "The distempers of monarchy were the great subjects of apprehension and redress in the *last century*; in this, the distempers of Parliament."

Not the distempers of Parliament in this year or the last, but in *this century*, i.e., its settled habitual distemper. "It is not in Parliament alone that the remedy for parliamentary disorders can be completed; and hardly indeed can it begin there. Until a confidence in Government is re-established, the people ought to be excited to a more strict and detailed attention to the conduct of their representatives. Standards for judging more systematically upon their conduct ought to be settled in the meetings of counties and corporations, and frequent and correct lists of the voters in all important questions ought to be procured."

"By such means something may be done, since it may appear who those are, that, by an indiscriminate support of all administrations, have totally banished all integrity and confidence out of public proceedings; have confounded the best men with the worst; and weakened and dissolved, instead of strengthening and compacting, the general frame of Government."

I wish it was possible to read the whole of this most important volume—but the consequences of these truths contained in it were all eloquently summed up by the author in his speech upon the reform of the household.

"But what I confess was uppermost with me, what I bent the whole course of my mind to, was the reduction of that corrupt influence which is itself the perennial spring of all prodigality and disorder; which loads us more than millions of debt; which takes

away vigour from our arms, wisdom from our councils, and every shadow of authority and credit from the most venerable parts of our constitution."

The same important truths were held out to the whole public, upon a still later occasion, by the person now at the head of His Majesty's councils; and so high (as it appears) in the confidence of the nation.* *He*, not in the *abstract*, like the author before you, but upon the *spur of the occasion*, and in the teeth of what had been just declared in the House of Commons, came to, and acted upon, resolutions which are contained in this book †—resolutions pointed to the purification of a Parliament dangerously corrupted into the very state described by Mr. Paine. Remember here, too, that I impute no censurable conduct to Mr. Pitt. It was the most brilliant passage in his life, and I should have thought his life a better one if he had continued uniform in the support of opinions which it is said he has not changed, and which certainly have had nothing to change them. But at all events, I have a right to make use of the authority of his splendid talents and high situation, not merely to protect the defendant, but the public, by resisting the precedent,—that what one man may do in England with approbation and glory, shall conduct another man to a pillory or a prison.

The abuses pointed out by the man before you led that right honourable gentleman to associate with many others of high rank, under the banners of the Duke of Richmond, whose name stands at the head of the list, and to pass various public resolutions concerning the absolute necessity of purifying the House of Commons; and we collect the plan from a preamble entered in the book: "Whereas the life, liberty, and property of every man is or may be affected by the law of the land in which he lives, and every man is bound to pay obedience to the same.

"And whereas, by the constitution of this kingdom, the right of making laws is vested in three estates, of King, Lords, and Commons, in Parliament assembled, and the consent of all the three said estates, comprehending the whole community, is necessary to make laws to bind the whole community. And whereas the House of Commons represents all the Commons of the realm, and the consent of the House of Commons binds the consent of all the Commons of the realm, and in all cases on which the legislature is competent to decide.

"And whereas no man is, or can be, actually represented who hath not a vote in the election of his representative.

"And whereas it is the right of every commoner of this realm (infants, persons of insane mind, and criminals incapacitated by law, only excepted) to have a vote in the election of the representative who is to give his consent to the making of laws by which he is to be bound.

* Mr. Pitt.

† Mr. Erskine took up a book.

"And whereas the number of persons who are suffered to vote for electing the members of the House of Commons, do not at this time amount to one-sixth part of the whole commons of this realm, whereby far the greater part of the said commons are deprived of their right to elect their representatives; and the consent of the majority of the whole community to the passing of laws, is given by persons whom they have not delegated for such purposes; and to which the said majority have not in fact consented by themselves or by their representatives.

"And whereas the state of election of members of the House of Commons hath in process of time so grossly deviated from its simple and natural principle of representation and equality, that in several places the members are returned by the property of one man; that the smallest boroughs send as many members as the largest counties, and that a majority of the representatives of the whole nation are chosen by a number of votes not exceeding twelve thousand."

These, with many others were published, not as *abstract speculative writings*, but within a few days after the House of Commons had declared that no such rights existed, and that no alteration was necessary in the representation. It was *then* that they met at the Thatched House and published their opinions and resolutions to the country at large. Were any of them prosecuted for these proceedings? Certainly not, for they were legal proceedings. But I desire you, as men of honour and truth, to compare all this with Mr. Paine's expression of the minister's touching Parliament with his opiate wand, and let equal justice be done—that *is all I ask*—let all be punished, or none. Do not let Mr. Paine be held out to the contempt of the public upon the score of his observations on Parliament, while others are enjoying all the sweets which attend a supposed attachment to their country, who have not only expressed the same sentiments, but have reduced their opinions to practice.

But *now* every man is to be cried down for such opinions. I observed that my learned friend significantly raised his voice in naming Mr. Horne Tooke, as if to connect him with Paine, or Paine with him. This is exactly the same course of justice: for, after all, he said nothing of Mr. Tooke. What could he have said, but that he was a man of great talents, and a subscriber with the great names I have read in proceedings which they have thought fit to desert?

Gentlemen, let others hold their opinions, and change them at their pleasure; I shall ever maintain it to be the dearest privilege of the people of Great Britain to watch over everything that affects their happiness, either in the system of their government or in the practice, and that for this purpose **THE PRESS MUST BE FREE**. It has always been so, and much evil has been corrected by it. If

Government finds itself annoyed by it, let it examine its own conduct, and it will find the cause: let it amend it, and it will find remedy.

Gentlemen, I am no friend to sarcasms in the discussion of grave subjects, but you must take writers according to the view of the mind at the moment; Mr. Burke, as often as anybody, indulges in it. Hear his reason, in his speech on reform, for not taking away the salaries from Lords who attend upon the British Court. "You would," said he, "have the Court deserted by all the nobility of the kingdom.

"Sir, the most serious mischiefs would follow from such a desertion. Kings are naturally lovers of low company; they are so elevated above all the rest of mankind, that they must look upon all their subjects as on a level: they are rather apt to hate than to love their nobility on account of the occasional resistance to their will, which will be made by their virtue, their petulance, or their pride. It must indeed be admitted, that many of the nobility are as perfectly willing to act the part of flatterers, tale-bearers, parasites, pimps, and buffoons, as any of the lowest and vilest of mankind can possibly be. But they are not properly qualified for this object of their ambition. The want of a regular education, and early habits, with some lurking remains of their dignity, will never permit them to become a match for an Italian eunuch, a mountebank, a fiddler, a player, or any regular practitioner of that tribe. The Roman emperors, almost from the beginning, threw themselves into such hands; and the mischief increased every day till its decline and its final ruin. It is, therefore, of very great importance (provided the thing is not overdone), to contrive such an establishment as must, almost whether a prince will or not, bring into daily and hourly offices about his person a great number of his first nobility; and it is rather an useful prejudice that gives them a pride in such a servitude: though they are not much the better for a Court, a Court will be much the better for them. I have, therefore, not attempted to reform any of the offices of honour about the King's person."

What is all this but saying that a King is an animal so incurably addicted to low company as generally to bring on by it the ruin of nations; but nevertheless, he is to be kept as a necessary evil, and his propensities bridled by surrounding him with a parcel of miscreants still worse, if possible, but better than those he would choose for himself. This, therefore, if taken by itself, would be a most abominable and libellous sarcasm on kings and nobility; but look at the whole speech, and you observe a great system of regulation; and no man, I believe, ever doubted Mr. Burke's attachment to monarchy. To judge, therefore, of any part of a writing, **THE WHOLE MUST BE READ.**

With this same view, I will read to you the beginning of Harrington's "*Oceana*;" but it is impossible to name this well-known author without exposing to just contempt and ridicule the igno-

rant or profligate misrepresentations which are vomited forth upon the public, to bear down every man as desperately wicked who in any age or country has countenanced a republic, for the mean purpose of prejudging this trial.

[Mr. Erskine took up a book, but laid it down again without reading from it, saying something to the gentleman who sat near him, in a low voice, which the reporter did not hear.]

Is this the way to support the English constitution? Are these the means by which Englishmen are to be taught to cherish it? I say, if the man upon trial were stained with blood instead of ink, if he were covered over with crimes which human nature would start at the naming of, the means employed against him would not be the less disgraceful.

For this notable purpose, then, Harrington, *not above a week ago*,* was handed out to us as a low, obscure wretch, involved in the murder of the monarch and the destruction of the monarchy, and as addressing his despicable works at the shrine of an usurper. Yet this very Harrington, this low blackguard, was descended (you may see his pedigree at the Heralds' Office for sixpence) from eight dukes, three marquises, seventy earls, twenty-seven viscounts, and thirty-six barons, sixteen of whom were knights of the Garter; a descent which I think would save a man from disgrace in any of the circles of Germany. But what was he besides? A BLOOD-STAINED RUFFIAN? Oh, brutal ignorance of the history of the country! He was the most affectionate servant of Charles the First, from whom he never concealed his opinions; for it is observed by Wood, that the King greatly affected his company; but when they happened to talk of a commonwealth, he would scarcely endure it. "I know not," says Toland, "which most to commend: the King, for trusting an honest man, though a republican; or Harrington, for owning his principles while he served a King."

But did his opinions affect his conduct? Let history again answer. He preserved his fidelity to his unhappy prince to the very last, after all his fawning courtiers had left him to his enraged subjects. He stayed with him while a prisoner in the Isle of Wight; came up by stealth to follow the fortunes of his monarch and master; even hid himself in the boot of the coach when he was conveyed to Windsor; and, ending as he began, fell into his arms and fainted on the scaffold.

After Charles's death, the "*Oceana*" was written, and as if it were written from justice and affection to his memory; for it breathes the same noble and spirited regard, and asserts that it was not CHARLES that brought on the destruction of the *monarchy*, but the feeble and ill-constituted nature of monarchy *itself*.

* A pamphlet had been published just before putting T. Paine and Harrington on the same footing—as obscure blackguards.

But the book was a flattery to Cromwell. Once more and finally let history decide. The "Oceana" was seized by the Usurper as a libel, and the way it was recovered is remarkable. I mention it to show that Cromwell was a wise man in himself, and knew on what governments must stand for their support.

Harrington waited on the Protector's daughter to beg for his book, which her father had taken, and on entering her apartment, snatched up her child and ran away. On her following him with surprise and terror, he turned to her and said, "I know what you feel as a mother, feel then for ME: your father has got MY child:" meaning the "Oceana." The "Oceana" was afterwards restored on her petition: Cromwell answering with the sagacity of a sound politician, "Let him have his book; if my government is made to stand, it has nothing to fear from PAPER SHOT." He said true. No good government will ever be battered by paper shot. Montesquieu says that "In a free nation, it matters not whether individuals reason well or ill; it is sufficient that they *do* reason. Truth arises from the collision, and from hence springs liberty, which is a security from the effect of reasoning." The Attorney-General has read extracts from Mr. Adams's answer to this book. Let others write answers to it, like Mr. Adams; I am not insisting upon the infallibility of Mr. Paine's doctrines; if they are erroneous, let them be answered, and truth will spring from the collision.

Milton wisely says, that a disposition in a nation to this species of controversy is no proof of sedition or degeneracy, but quite the reverse. [I omitted to cite the passage with the others.] In speaking of this subject, he rises into that inexpressibly sublime style of writing wholly peculiar to himself. He was, indeed, no plagiarist from anything human; he looked up for light and expression, as he himself wonderfully describes it, by devout prayer to that great Being who is the source of all utterance and knowledge; and who sendeth out His seraphim with the hallowed fire of His altar to touch and purify the lips of whom He pleases. "When the cheerfulness of the people," says this mighty poet, "is so sprightly up as that it has not only wherewith to guard well its own freedom and safety, but to spare and to bestow upon the solidest and sublimest points of controversy and new invention, it betokens us not degenerated nor drooping to a fatal decay, but casting off the old and wrinkled skin of corruption, to outlive these pangs, and wax young again, entering the glorious ways of truth and prosperous virtue, destined to become great and honourable in these latter ages. Methinks I see, in my mind, a noble and puissant nation rousing herself, like a strong man after sleep, and shaking her invincible locks: methinks I see her as an eagle muing her mighty youth, and kindling her undazzled eyes at the full mid-day beam; purging and unscaling her long-abused sight at the fountain itself of heavenly radiance; while the whole noise of timorous and flocking

birds, with those also that love the twilight, flutter about, amazed at what she means, and in their envious gabble would prognosticate a year of sects and schisms."

Gentlemen, what Milton only saw in his mighty imagination, I see in fact; what he expected, but which never came to pass, I see now fulfilling: methinks I see this noble and puissant nation, not degenerated and drooping to a fatal decay, but casting off the wrinkled skin of corruption to put on again the vigour of her youth. And it is because others as well as myself see this that we have all this uproar!—France and its constitution are the mere pretences. It is because Britons begin to recollect the inheritance of their own constitution, left them by their ancestors:—it is because they are awakened to the corruptions which have fallen upon its most valuable parts, that forsooth the nation is in danger of being destroyed by a single pamphlet. I have marked the course of this alarm: it began with the renovation of those exertions for the public which the alarmists themselves had originated and deserted; and they became louder and louder when they saw them avowed and supported by my admirable friend Mr. Fox, the most eminently honest and enlightened statesman that history brings us acquainted with: a man whom to name is to honour, but whom in attempting adequately to describe, I must fly to Mr. Burke, my constant refuge when eloquence is necessary: a man who, to relieve the sufferings of the most distant nation, "put to the hazard his ease, his security, his interest, his power, even his darling popularity, for the benefit of a people whom he had never seen." How much more then for the inhabitants of his native country!—yet this is the man who has been censured and disavowed in the manner we have lately seen.

Gentlemen, I have but a few more words to trouble you with: I take my leave of you with declaring, that all this freedom which I have been endeavouring to assert is no more than the ancient freedom which belongs to our own inbred constitution. I have not asked you to acquit Thomas Paine upon any new lights, or upon any principle but that of the law, which you are sworn to administer:—my great object has been to inculcate, that wisdom and policy, which are the parents of the government of Great Britain, forbid this jealous eye over her subjects; and that, on the contrary, they cry aloud in the language of the poet, adverted to by Lord Chatham on the memorable subject of America, *unfortunately without effect*—

"Be to their faults a little blind,
Be to their virtues very kind,
Let all their thoughts be unconfined,
And clap your padlock on the mind."

Engage the people by their affections,—convince their reason,—and they will be loyal from the only principle that can make loyalty sincere, vigorous, or rational,—a conviction that it is their truest

interest, and that their government is for their good. Constraint is the natural parent of resistance, and a pregnant proof that reason is not on the side of those who use it. You must all remember Lucian's pleasant story : Jupiter and a countryman were walking together, conversing with great freedom and familiarity upon the subject of heaven and earth. The countryman listened with attention and acquiescence, while Jupiter strove only to convince him ; but happening to hint a doubt, Jupiter turned hastily round and threatened him with his thunder. " Ah, ah ! " says the countryman, " now, Jupiter, I know that you are wrong ; you are always wrong when you appeal to your thunder."

This is the case with me—I can reason with the people of England, but I cannot fight against the thunder of authority.

Gentlemen, this is my defence for free opinions. With regard to myself, I am, and always have been, obedient and affectionate to *the law* :—to that rule of action, as long as I exist, I shall ever give my voice and my conduct ; but I shall ever do as I have done to-day, maintain the dignity of my high profession, and perform, as I understand them, all its important duties.

[Mr. Attorney-General arose immediately to reply to Mr. Erskine, when Mr. Campbell (the foreman of the jury) said,—My Lord, I am authorised by the jury to inform the Attorney-General that a reply is not necessary for them, unless the Attorney-General wishes to make it, or your Lordship. Mr. Attorney-General sat down, and the jury gave in their verdict,—GUILTY.]

*SPEECH on the Prosecution of the Publisher of
"The Age of Reason."*

THE SUBJECT.

To the trial of Thomas Paine we subjoin Lord Erskine's speech on the prosecution of the printer and publisher of "*The Age of Reason*," written by the same author. We print it in this place, though much out of the chronological order, as it appears to have been delivered in the year 1797, for two reasons—first, because, in preserving arguments illustrating the principles of British liberty, we are desirous not to be considered as in any manner sanctioning invectives against our admirable constitution; secondly, because we owe it to Lord Erskine himself, whose speech upon the following prosecution may be considered as containing his own opinions and principles; it appearing to have been spoken more in his own personal character than as an advocate; and the result seems rather to be against the full application of the arguments maintained by his Lordship in defending the publication of "*The Rights of Man*."

THE SPEECH.

GENTLEMEN OF THE JURY,—The charge of blasphemy, which is put upon the record against the publisher of this publication, is not an accusation of the servants of the Crown, but comes before you sanctioned by the oaths of a grand jury of the country. It stood for trial upon a former day; but it happening, as it frequently does, without any imputation upon the gentlemen named in the pannel, that a sufficient number did not appear to constitute a full special jury, I thought it my duty to withdraw the cause from trial till I could have the opportunity of addressing myself to *you*, who were originally appointed to try it.

I pursued this course from no jealousy of the common juries appointed by the laws for the ordinary service of the Court, since my whole life has been one continued experience of their virtues; but because I thought it of great importance that those who were to decide upon a cause so very momentous to the public should have the highest possible qualifications for the decision; that they should not only be men capable from their educations of forming an enlightened judgment, but that their situations should be such as to bring them within the full view of their country to which, in character and in estimation, they were in their own turns to be responsible.

Not having the honour, gentlemen, to be sworn for the King as one of his counsels, it has fallen much oftener to my lot to defend indictments for libels than to assist in the prosecution of them; but I feel no embarrassment from that recollection. I shall not be found to-day to express a sentiment, or to utter an expression, inconsistent with those invaluable principles for which I have uniformly contended in the defence of others. Nothing that I have ever said, either professionally or personally, for the liberty of the press, do I mean to-day to contradict or counteract. On the contrary, I desire to preface the very short discourse I have to make to you, with reminding you, that it is your most solemn duty to take care that it suffers no injury in your hands. A free and unlicensed press, *in the just and legal sense of the expression*, has led to all the blessings, both of religion and government, which Great Britain or any part of the world at this moment enjoys, and it is calculated to advance mankind to still higher degrees of civilisation and happiness. But this freedom, like every other, must be limited to be enjoyed, and, like every human advantage, may be defeated by its abuse.

Gentlemen, the defendant stands indicted for having published this book, which I have only read from the obligations of professional duty, and which I rose from the reading of with astonishment and disgust. Standing here with all the privileges belonging to the highest counsel for the Crown, I shall be entitled to reply to any defence that shall be made for the publication. I shall wait with patience till I hear it.

Indeed, if I were to anticipate the defence which I hear and read of, it would be defaming by anticipation the learned counsel who is to make it; since, if I am to collect it from a formal notice given to the prosecutors in the course of the proceedings, I have to expect that, instead of a defence conducted according to the rules and principles of English law, the foundation of all our laws, and the sanctions of all justice, is to be struck at and insulted. What gives the Court its jurisdiction? What but the oath which his Lordship, as well as yourselves, have sworn upon the Gospel to fulfil? Yet, in the King's court, where His Majesty is himself also sworn to administer the justice of England,—in the King's court, who receives his high authority under a solemn oath to maintain the Christian religion as it is promulgated by God in the Holy Scriptures, I am nevertheless called upon as counsel for the prosecution to "*produce a certain book described in the indictment to be THE HOLY BIBLE.*" No man deserves to be upon the Rolls who has dared, as an attorney, to put his name to such a notice. It is an insult to the authority and dignity of the court of which he is an officer, since it calls in question the very foundations of its jurisdiction. If this is to be the spirit and temper of the defence; if, as I collect from that array of books which are

spread upon the benches behind me, this publication is to be vindicated by an attack of all the truths which the Christian religion promulgates to mankind, let it be remembered that such an argument was neither suggested nor justified by anything said by me on the part of the prosecution.

In this stage of the proceedings I shall call for reference to the Sacred Scriptures, not from their merits, unbounded as they are, but from their authority in a Christian country—not from the obligations of conscience, but from the rules of law. For my own part, gentlemen, I have been ever deeply devoted to the truths of Christianity, and my firm belief in the Holy Gospel is by no means owing to the prejudices of education (though I was religiously educated by the best of parents), but has arisen from the fullest and most continued reflections of my riper years and understanding. It forms at this moment the great consolation of a life which, as a shadow, passes away, and without it I should consider my long course of health and prosperity (too long, perhaps, and too uninterrupted to be good for any man) only as the dust which the wind scatters, and rather as a snare than as a blessing.

Much, however, as I wish to support the authority of Scripture from a reasoned consideration of it, I shall repress that subject for the present. But if the defence, as I have suspected, shall bring them at all into argument or question, I must then fulfil a duty which I owe, not only to the Court, as counsel for the prosecution, but to the public, and to the world, to state what I feel and know concerning the evidences of that religion which is denied without being examined, and reviled without being understood.

I am well aware that by the communications of a FREE PRESS all the errors of mankind, from age to age, have been dissipated and dispelled, and I recollect that the world, under the banners of reformed Christianity, has struggled through persecution to the noble eminence on which it stands at this moment, shedding the blessings of humanity and science upon the nations of the earth.

It may be asked, then, by what means the Reformation would have been effected if the books of the Reformers had been suppressed, and the errors of now exploded superstitions had been supported by the terrors of an unreformed state? or how, upon such principles, any reformation, civil or religious, can in future be effected? The solution is easy:—Let us examine what are the genuine principles of the liberty of the press, as they regard writings upon general subjects, unconnected with the personal reputations of private men, which are wholly foreign to the present inquiry. They are full of simplicity, and are brought as near perfection by the law of England as, perhaps, is attainable by any of the frail institutions of mankind.

Although every community must establish supreme authorities, founded upon fixed principles, and must give high powers to

magistrates to administer laws for the preservation of government, and for the security of those who are to be protected by it; yet, as infallibility and perfection belong neither to human individuals nor to human establishments, it ought to be the policy of all free nations, as it is most peculiarly the principle of our own, to permit the most unbounded freedom of discussion, even to the detection of errors in the constitution of the very Government itself; so as that common decorum is observed, which every State must exact from its subjects, and which imposes no restraint upon any intellectual composition, fairly, honestly, and decently addressed to the consciences and understandings of men. Upon this principle, I have an unquestionable right—a right which the best subjects have exercised—to examine the principles and structure of the constitution, and by fair, manly reasoning, to question the practice of its administrators. I have a right to consider and to point out errors in the one or in the other, and not merely to reason upon their existence, but to consider the means of their reformation.

By such free, well-intentioned, modest, and dignified communication of sentiments and opinions, all nations have been gradually improved, and milder laws and purer religions have been established. The same principles which vindicate civil controversies, honestly directed, extend their protection to the sharpest contentions on the subject of religious faiths. This rational and legal course of improvement was recognised and ratified by Lord Kenyon as the law of England in a late trial at Guildhall, where he looked back with gratitude to the labours of the Reformers, as the fountains of our religious emancipation, and of the civil blessings that followed in their train. The English constitution, indeed, does not stop short in the toleration of religious *opinions*, but liberally extends it to *practice*. It permits every man, EVEN PUBLICLY, to worship God according to his own conscience, though in marked dissent from the national establishment, so as he professes the general faith, which is the sanction of all our moral duties, and the only pledge of our submission to the system which constitutes the State.

Is not this freedom of controversy, and freedom of worship, sufficient for all the purposes of human happiness and improvement? Can it be necessary for either that the law should hold out indemnity to those who wholly abjure and revile the Government of their country, or the religion on which it rests for its foundation? I expect to hear, in answer to what I am now saying, much that will offend me. My learned friend, from the difficulties of his situation, which I know from experience how to feel for very sincerely, may be driven to advance propositions which it may be my duty, with much freedom, to reply to; and the law will sanction that freedom. But will not the ends of justice be completely answered by my exercise of that right in terms that are

decent and calculated to expose its defects? Or will my argument suffer, or will public justice be impeded, because neither private honour and justice, nor public decorum, would endure my telling my very learned friend, because I differ from him in opinion, that he is a fool, a liar, and a scoundrel, in the face of the Court? This is just the distinction between a book of free legal controversy, and the book which I am arraigning before you. Every man has a right to investigate, with decency, controversial points of the Christian religion; but no man, consistently with a law which only exists under its sanctions, has a right to deny its very existence, and to pour forth such shocking and insulting invectives as the lowest establishments in the gradations of civil authority ought not to be subjected to, and which soon would be borne down by insolence and disobedience if they were.

The same principle pervades the whole system of the law, not merely in its abstract theory, but in its daily and most applauded practice. The intercourse between the sexes, which, properly regulated, not only continues, but humanises and adorns our natures, is the foundation of all the thousand romances, plays, and novels which are in the hands of everybody. Some of them lead to the confirmation of every virtuous principle; others, though with the same profession, address the imagination in a manner to lead the passions into dangerous excesses. But though the law does not nicely discriminate the various shades which distinguish these works from one another, so as to suffer many to pass, through its liberal spirit, that upon principle ought to be suppressed, would it, or does it tolerate, or does any decent man contend that it ought to pass by unpunished, libels of the most shameless obscenity manifestly pointed to debauch innocence, and to blast and poison the morals of the rising generation? This is only another illustration to demonstrate the obvious distinction between the work of an author who fairly exercises the powers of his mind in investigating the religion or government of any country, and him who attacks the rational existence of every religion or government, and brands with absurdity and folly the State which sanctions, and the obedient tools who cherish, the delusion. But this publication appears to me to be as cruel and mischievous in its effects as it is manifestly illegal in its principles, because it strikes at the best, sometimes, alas! the only, refuge and consolation amidst the distresses and afflictions of the world. The poor and humble, whom it affects to pity, may be stabbed to the heart by it. THEY have more occasion for firm hopes beyond the grave than the rich and prosperous, who have other comforts to render life delightful. I can conceive a distressed but virtuous man, surrounded by his children, looking up to him for bread when he has none to give them, sinking under the last day's labour, and unequal to the next, yet still, supported by confidence in the hour when all tears shall be wiped

from the eyes of affliction, bearing the burden laid upon him by a mysterious Providence which he adores, and anticipating with exultation the revealed promises of his Creator, when he shall be greater than the greatest, and happier than the happiest of mankind. What a change in such a mind might be wrought by such a merciless publication! Gentlemen, whether these remarks are the overcharged declamations of an accusing counsel, or the just reflections of a man anxious for the public happiness, which is best secured by the morals of a nation, will be soon settled by an appeal to the passages in the work that are selected by the indictment for your consideration and judgment. You are at liberty to connect them with every context and sequel, and to bestow upon them the mildest interpretation.

[Here Mr. Erskine read and commented upon several of the selected passages, and then proceeded as follows]:—

Gentlemen, it would be useless and disgusting to enumerate the other passages within the scope of the indictment. How any man can rationally vindicate the publication of such a book, in a country where the Christian religion is the very foundation of the law of the land, I am totally at a loss to conceive, and have no ideas for the discussion of. How is a tribunal, whose whole jurisdiction is founded upon the solemn belief and practice of what is here denied as falsehood, and reprobated as impiety, to deal with such an anomalous defence? Upon what principle is it even offered to the Court, whose authority is contemned and mocked at? If the religion proposed to be called in question is not previously adopted in belief, and solemnly acted upon, what authority has the Court to pass any judgment at all of acquittal or condemnation? Why am I now, or upon any other occasion, to submit to his Lordship's authority? Why am I now, or at any time, to address twelve of my equals, as I am now addressing you, with reverence and submission? Under what sanction are the witnesses to give their evidence, without which there can be no trial? Under what obligations can I call upon you, the jury representing your country, to administer justice? Surely upon no other than that you are SWORN TO ADMINISTER IT UNDER THE OATHS YOU HAVE TAKEN. The whole judicial fabric, from the King's sovereign authority to the lowest office of magistracy, has no other foundation. The whole is built, both in form and substance, upon the same oath of every one of its ministers to do justice, AS GOD SHALL HELP THEM HEREAFTER. WHAT GOD? AND WHAT HEREAFTER? That God, undoubtedly, who has commanded kings to rule, and judges to decree justice; who hath said to witnesses, not only by the voice of nature, but in revealed commandments—THOU SHALT NOT BEAR FALSE TESTIMONY AGAINST THY NEIGHBOUR; and who has enforced obedience to them by the revelation of the unutterable blessings which

shall attend their observance, and the awful punishments which shall await upon their transgressions.

But it seems this is an AGE OF REASON, and the time and the person are at last arrived that are to dissipate the errors which have overspread the past generations of ignorance. The believers in Christianity are many, but it belongs to the few that are wise to correct their credulity. Belief is an act of reason, and superior reason may therefore dictate to the weak. In running the mind along the long list of sincere and devout Christians, I cannot help lamenting that Newton had not lived to this day to have had his shallowness filled up with this new flood of light. But the subject is too awful for irony. I will speak plainly and directly. Newton was a Christian! Newton, whose mind burst forth from the fetters fastened by nature upon our finite conceptions—Newton, whose science was truth, and the foundation of whose knowledge of it was philosophy—not those visionary and arrogant presumptions which too often usurp its name, but philosophy resting upon the basis of mathematics, which, like figures, cannot lie—Newton, who carried the line and rule to the uttermost barriers of creation, and explored the principles by which all created matter exists and is held together. But this extraordinary man, in the mighty reach of his mind, overlooked, perhaps, the errors which a minuter investigation of the created things on this earth might have taught him. What shall then be said of the great Mr. Boyle, who looked into the organic structure of all matter, even to the inanimate substances which the foot treads upon? Such a man may be supposed to have been equally qualified with Mr. Paine to look up through nature to nature's God. Yet the result of all *his* contemplations was the most confirmed and devout belief in all which the other holds in contempt as despicable and drivelling superstition. But this error might, perhaps, arise from a want of due attention to the foundations of human judgment, and the structure of that understanding which God has given us for the investigation of truth. Let that question be answered by Mr. Locke, who, to the highest pitch of devotion and adoration, was a Christian—Mr. Locke, whose office was to detect the errors of thinking, by going up to the very fountains of thought; and to direct into the proper tract of reasoning the devious mind of man, by showing him its whole process, from the first perceptions of sense to the last conclusions of ratiocination—putting a rein upon false opinion, by practical rules for the conduct of human judgment.

But these men, it may be said, were only deep thinkers, and lived in their closets, unaccustomed to the traffic of the world, and to the laws which practically regulate mankind. Gentlemen, in the place where we now sit to administer the justice of this great country the never-to-be-forgotten Sir Matthew Hale presided, whose faith in Christianity is an exalted commentary upon its truth and reason,

and whose life was a glorious example of its fruits; whose justice, drawn from the pure fountain of the Christian dispensation, will be, in all ages, a subject of the highest reverence and admiration. But it is said by the author that the Christian fable is but the tale of the more ancient superstitions of the world, and may be easily detected by a proper understanding of the mythologies of the heathens. Did Milton understand those mythologies? Was he less versed than Mr. Paine in the superstitions of the world? No; they were the subject of his immortal song; and though shut out from all recurrence to them, he poured them forth from the stores of a memory rich with all that man ever knew, and laid them in their order as the illustration of real and exalted faith, the unquestionable source of that fervid genius which has cast a kind of shade upon all the other works of man—

"He passed the bounds of flaming space,
Where angels tremble while they gaze—
He saw,—till blasted with excess of light,
He closed his eyes in endless night."

But it was the light of the BODY only that was extinguished: "The CELESTIAL LIGHT shone inward, and enabled him to justify the ways of God to man." The result of his thinking was nevertheless not quite the same as the author's before us. The mysterious incarnation of our blessed Saviour (which this work blasphemes in words so wholly unfit for the mouth of a Christian, or for the ear of a court of justice, that I dare not, and will not, give them utterance) Milton made the grand conclusion of his "Paradise Lost," the rest from his finished labours, and the ultimate hope, expectation, and glory of the world.

"A Virgin is His Mother, but His Sire,
The power of the Most High :—He shall ascend
The throne hereditary, and bound His reign
With earth's wide bounds, His glory with the heavens."

The immortal poet, having thus put into the mouth of the angel the prophecy of man's redemption, follows it with that solemn and beautiful admonition, addressed in the poem to our great first parent, but intended as an address to his posterity through all generations:—

"This having learned, thou hast attained the sum
Of wisdom; hope no higher, though all the stars
Thou knew'st by name, and all th' ethereal pow'rs,
All secrets of the deep, all Nature's works,
Or works of God in heaven, air, earth, or sea,
And all the riches of this world enjoy'st,
And all the rule, one empire; only add
Deeds to thy knowledge answerable, add faith,
Add virtue, patience, temperance, add love,
By name to come called Charity, the soul
Of all the rest: then wilt thou not be loth
To leave this paradise, but shalt possess
A paradise within thee, happier far."

Thus you find all that is great, or wise, or splendid, or illustrious, amongst created beings—all the minds gifted beyond ordinary nature, if not inspired by its universal Author for the advancement and dignity of the world, though divided by distant ages, and by clashing opinions, yet joining as it were in one sublime chorus to celebrate the truths of Christianity, and laying upon its holy altars the never-fading offerings of their immortal wisdom.

Against all this concurring testimony, we find suddenly, from the author of this book, that the Bible teaches nothing but "LIES, OBSCENITY, CRUELTY, and INJUSTICE." Had he ever read our Saviour's sermon on the mount, in which the great principles of our faith and duty are summed up? Let us all but read and practise it; and lies, obscenity, cruelty, and injustice, and all human wickedness, will be banished from the world!

Gentlemen, there is but one consideration more, which I cannot possibly omit, because I confess it affects me very deeply. The author of this book has written largely on public liberty and government; and this last performance, which I am now prosecuting, has, on that account, been more widely circulated, and principally among those who attached themselves from principle to his former works. This circumstance renders a public attack *upon all revealed religion* from *such a writer* infinitely more dangerous. The religious and moral sense of the people of Great Britain is the great anchor which alone can hold the vessel of the State amidst the storms which agitate the world; and if the mass of the people were debauched from the principles of religion—the true basis of that humanity, charity, and benevolence which have been so long the national characteristic, instead of mixing myself, as I sometimes have done, in political reformatations, I would retire to the utmost corners of the earth to avoid their agitation, and would bear not only the imperfections and abuses complained of in our own wise establishment, but even the worst government that ever existed in the world, rather than go to the work of reformation with a multitude set free from all the charities of Christianity, who had no other sense of God's existence than was to be collected from Mr. Paine's observation of nature, which the mass of mankind have no leisure to contemplate, which promises no future rewards to animate the good in the glorious pursuit of human happiness, nor punishments to deter the wicked from destroying it even in its birth. The people of England are a religious people, and, with the blessing of God, so far as it is in my power, I will lend my aid to keep them so.

I have no objections to the most extended and free discussions upon doctrinal points of the Christian religion; and *though the law of England does not permit it*, I do not dread the reasonings of deists against the existence of Christianity itself, because, as was

said by its divine Author, if it be of God, it will stand. An intellectual book, however erroneous, addressed to the intellectual world upon so profound and complicated a subject, can never work the mischief which this indictment is calculated to repress. Such works will only incite the minds of men enlightened by study to a deeper investigation of a subject well worthy of their deepest and continued contemplation. The powers of the mind are given for human improvement in the progress of human existence. The changes produced by such reciprocations of lights and intelligences are certain in their progressions, and make their way imperceptibly by the final and irresistible power of truth. If Christianity be founded in falsehood, let us become deists in this manner, and I am contented. But this book has no such object, and no such capacity; it presents no arguments to the wise and enlightened. On the contrary, it treats the faith and opinions of the wisest with the most shocking contempt, and stirs up men without the advantages of learning or sober thinking to a total disbelief of everything hitherto held sacred; and consequently, to a rejection of all the laws and ordinances of the State, which stand only upon the assumption of their truth.

Gentlemen, I cannot conclude without expressing the deepest regret at all attacks upon the Christian religion by authors who profess to promote the civil liberties of the world. For under what other auspices than Christianity have the lost and subverted liberties of mankind in former ages been re-asserted? By what zeal but the warm zeal of devout Christians have English liberties been redeemed and consecrated? Under what other sanctions, even in our own days, have liberty and happiness been spreading to the uttermost corners of the earth? What work of civilisation, what commonwealth of greatness, has this bald religion of nature ever established? We see, on the contrary, the nations that have no other light than that of nature to direct them sunk in barbarism or slaves to arbitrary governments; whilst, under the Christian dispensation, the great career of the world has been slowly but clearly advancing—lighter at every step—from the encouraging prophecies of the gospel, and leading, I trust in the end, to universal and eternal happiness. Each generation of mankind can see but a few revolving links of this mighty and mysterious chain; but by doing our several duties in our allotted stations, we are sure that we are fulfilling the purposes of our existence. You, I trust, will fulfil *YOURS* this day.

SPEECH in defence of JOHN FROST, an attorney of the Court of King's Bench, who was tried before Lord Kenyon and a special jury, in Hilary Term, 1793, for seditious words.

GENTLEMEN OF THE JURY,—I rise to address you under circumstances so peculiar, that I consider myself entitled, not only for the defendant arraigned before you, but personally for myself, to the utmost indulgence of the Court. I came down this morning with no other notice of the duty cast upon me in this cause, nor any other direction for the premeditation necessary to its performance, than that which I have ever considered to be the safest and the best, namely, the records of the Court, as they are entered here for trial, where, for the ends of justice, the charge must always appear with the most accurate precision, that the accused may know what crime he is called upon to answer, and his counsel how he may defend him. Finding, therefore, upon the record which arraigns the defendant, a simple, unqualified charge of seditious words, unconnected and uncomplicated with any extrinsic events, I little imagined that the conduct of my client was to receive its colour and construction from the present state of France, or rather of all Europe, as affecting the condition of England. I little dreamed that the 6th day of November (which, reading the indictment, I had a right to consider like any other day in the calendar) was to turn out an epoch in this country (for so it is styled in the argument), and that, instead of having to deal with idle, thoughtless words, uttered over wine, through the passage of a coffee-house, with whatever *at any time* might belong to them, I was to meet a charge of which I had no notice or conception, and to find the *loose dialogue*, which, even upon the face of the record itself, exhibits nothing more than a casual, sudden conversation, exalted to an accusation of the most premeditated, serious, and alarming nature, verging upon high treason itself, by its connexion with the most hostile purposes to the State, and assuming a shape still more interesting from its dangerous connexion with certain mysterious conspiracies, which, in confederacy with French republicans, threaten, *it seems*, the constitution of our once happy country.

Gentlemen, I confess myself much unprepared for a discussion of this nature, and a little disconcerted at being so; for though (as I have said) I had no notice from the record that the politics of Europe were to be the subject of discourse, yet experience ought to have taught me to expect it; for what act of Government has for a long time past been carried on by any other means?—*when* or *where* has been the debate, or *what* has been the object of authority, in which the affairs of France have not taken the lead? The affairs of France have, indeed, become the common stalking-horse for all State purposes. I know the honour of my learned friend too well to impute to him the introduction of them for any improper or dishonourable purpose. I am sure he connects them in his own mind with the subject, and thinks them legally before you. I am bound to think so, because the general tenor of his address to you has been manly and candid. But I assert, that neither the actual condition of France, nor the supposed condition of this country, are, or can be, in any shape before you; and that upon the trial of this indictment, supported only by the evidence you have heard, the words must be judged of as if spoken by any man or woman in the kingdom, at any time from the Norman Conquest to the moment I am addressing you.

I admit, indeed, that the particular time in which words are spoken, or acts committed, *may* most essentially alter their quality and construction, and give to expressions, or conduct, which in another season might have been innocent, or at least indifferent, the highest and most enormous guilt; but for that very reason, the supposed particularity of the present times, as applicable to the matter before you, is absolutely shut out from your consideration—shut out upon the plainest and most obvious principle of justice and law, because, wherever *time* or *occasion* mix with an act, affect its quality, and constitute or enhance its criminality, they then become an essential part of the misdemeanour itself, and must consequently be charged as such upon the record. I plainly discover I have his Lordship's assent to this proposition. If, therefore, the Crown had considered this cause originally in the serious light which it considers it to-day, it has wholly mistaken its course. If it had considered the Government of France as actively engaged in the encouragement of disaffection to the monarchy of England, and that her newly-erected republic was set up by her as the great type for imitation and example here; if it had considered that numbers, and even classes of our countrymen, were ripe for disaffection, if not for rebellion, and that the defendant, as an emissary of France, had spoken the words with the premeditated design of undermining our Government, this situation of things might and ought to have been put *as facts upon the record*, and as facts established by evidence, instead of resting, as they do to-day, upon assertion. By such a course, the crime indeed would have become of

the magnitude represented ; but on the other hand, as the conviction could only have followed from the proof, *the defendant, upon the evidence of to-day, must have an hour ago been acquitted*, since not a syllable has been proved of any emissaries from France to debauch our monarchical principles ; not even an insinuation *in evidence that, if there were any such, the defendant was one of them* ; not a syllable of proof, either directly or indirectly, that the condition of the country, when the words were uttered, differed from its ordinary condition in times of prosperity and peace. It is therefore a new and most compendious mode of justice that the facts which wholly constitute, or at all events lift up the dignity and danger of the offence, should not be charged upon record, *because they could not be proved*, but are to be taken for granted in the argument, so as to produce the same effect upon the trial, and in the punishment, as if they had been actually charged, and completely established. If the affairs of France, as they are supposed to affect this country, had been introduced without a warrant from the charge or the evidence, I should have been wholly silent concerning them ; but as they have been already mixed with the subject in a manner so eloquent and affecting, as too probably to have made a strong impression, it becomes my duty to endeavour at least to remove it.

The late revolutions in France have been represented to you as not only ruinous to their authors, and to the inhabitants of that country, but as likely to shake and disturb the principles of this and all other Governments ; you have been told that though the English people are generally well affected to their government—ninety-nine out of one hundred, upon Mr. Attorney-General's own statement—yet that wicked and designing men have long been labouring to overturn it, and that nothing short of the wise and spirited exertions of the present Government (of which this prosecution is, it seems, one of the instances), have hitherto averted, or can continue to avert, the dangerous contagion which misrule and anarchy are spreading over the world ; that bodies of Englishmen, forgetting their duty to their own country and its constitution, have congratulated the Convention of France upon the formation of their monstrous Government ; and that the conduct of the defendant must be considered as a part of a deep-laid system of disaffection which threatened the establishments of this kingdom.

Gentlemen, this state of things having no support whatever from any evidence before you, and resting only upon *opinion*, I have an equal right to *mine*, having the same means of observation with other people of what passes in the world ; and as I have a very clear one upon this subject, I will give it you in a few words.

I am of opinion, then, that there is not the smallest foundation for the alarm which has been so industriously propagated ; in which

I am so far from being singular, that I verily believe the authors of it are themselves *privately* of the same way of thinking; but it was convenient for *certain persons*, who had changed their principles, to find some plausible pretext for changing them; it was convenient for those who, when *out of* power, had endeavoured to lead the public mind to the necessity of reforming the corruptions of our own Government, to find *any* reasons for their continuance and confirmation, when they operated as engines to support themselves in the exercise of powers which were only odious when in *other hands*. For this honourable purpose, the sober, reflecting, and temperate character of the English nation was to be represented as fermenting into sedition, and into an insane contempt for the revered institutions of their ancestors; for this honourable purpose the wisest men, the most eminent for virtue, the most splendid in talents, the most independent for rank and property in the country, were, for no other crime than their perseverance in those sentiments which *certain persons had originated and abandoned*, to be given up to the licentious pens and tongues of hired defamation, to be stabbed in the dark by anonymous accusation, and to be held out to England, and to the whole world, as conspiring under the auspices of cut-throats to overturn everything sacred in religion, and venerable in the ancient government of our country. Certain it is that the whole system of government, of which the business we are now engaged in is no mean specimen, came upon the public with the suddenness of a clap of thunder, without one act to give it foundation, *from the very moment that notice was given of a motion in Parliament to reform the representation of the people*. Long, long before that time, "The Rights of Man" and other books, though not complained of, had been written; equally long before it, the addresses to the French Government, which have created such a panic, had existed; but as there is a give-and-take in this world, they passed unregarded. Leave but the *practical* corruptions, and they are contented to wink at the *speculations* of theorists, and the compliments of public-spirited civility; but the moment the national attention was awakened *to look to things in practice, and to seek to reform corruptions at home*, from that moment, as at the ringing of a bell, the whole hive began to swarm, and every man in his turn has been stung.

This, gentlemen, is the real state of the case; and I am so far from pushing the observation beyond its bearing for the defence of a client, that I am ready to admit Mr. Frost, in his conduct, has not been wholly invulnerable, and that in some measure he has brought this prosecution upon himself.

Gentlemen, Mr. Frost must forgive me if I take the liberty to say that, with the best intentions in the world, he formerly pushed his observations and conduct respecting Government further than many would be disposed to follow him. I cannot disguise or con-

ceal from you that I find his name in this green book * as associated with Mr. Pitt and the Duke of Richmond at the Thatched House Tavern, in St. James's Street ; that I find him also the correspondent of the former, and that I discover in their publications on the structure and conduct of the House of Commons expressions which, however merited, and in my opinion commendable, would now be considered not merely as intemperate and unguarded, but as highly criminal.†

* Mr. Erskine read the following minutes from Mr. Pitt's handwriting :—

“THATCHED HOUSE TAVERN, May 18, 1782.

“At a numerous and respectable meeting of members of Parliament friendly to a constitutional reformation, and of members of several committees of counties and cities, the Duke of Richmond, Lord Surrey, Lord Mahon, the Lord Mayor, Hon. William Pitt, Sir Watkin Lewes, Rev. Mr. Wyvil, Mr. Falconer, Mr. Redman, Mr. Withers, Mr. Bodely, Mr. Vardy, Mr. Sheridan, Mr. Alderman Turner, Mr. Trecothick, Mr. Vincent, Sir C. Turner, Mr. Taylor, Mr. Amherst, Mr. Duncombe, Mr. J. Martin, Mr. Alderman Townsend, Mr. Alderman Creighton, Mr. Alderman Wilkes, Rev. Mr. Bromley, Mr. B. Hollis, Mr. Disney Fitch, Mr. Edmunds, General Hale, Sir Cecil Wray, Mr. B. Hayes, Sir J. Norcliffe, Dr. John Jebb, Major Cartwright, Mr. Hill, Mr. Baynes, Mr. Shove, Mr. Churchill, Mr. Tooke, Mr. Horne, Mr. Frost, Mr. Trevanion, Dr. Brocklesby, Rev. Dr. Rycroft, Colonel Byron, Major Parry, Mr. Green, &c., &c. :

“Resolved unanimously,—That the motion of the Honourable William Pitt, on the 7th instant, for the appointment of a committee of the House of Commons to inquire into the state of the representation of the people of Great Britain in Parliament, and to report the same to the House ; and also what steps it might be proper in their opinion to take thereupon, having been defeated by a motion made for the order of the day, it is become indispensably necessary that application should be made to Parliament by petitions from the collective body of the people in their respective districts, requesting a substantial reformation of the Commons House of Parliament,

“Resolved unanimously,—That this meeting, considering that a general application by the collective body to the Commons House of Parliament cannot be made before the close of the present session, is of opinion that the sense of the people should be taken at such times as may be convenient this summer, in order to lay their several petitions before Parliament early in the next session, when their proposition for a Parliamentary reformation, *without which neither the liberty of the nation can be preserved, nor the permanence of a wise and virtuous administration can be secured*, may receive that ample and mature discussion which so momentous a question demands.

“Resolved unanimously,—That the thanks of this meeting be given to the Honourable William Pitt for moving, John Sawbridge, Esq., for seconding, and the one hundred and forty-one other members who supported, the motion for a committee to inquire into the state of Parliamentary representation, and to suggest what in their opinion ought to be done thereupon ; as well as to the Duke of Richmond, Lord John Cavendish, Mr. Secretary Fox, and every other member of the present Ministry, or of either House of Parliament, who has in any way promoted the necessary reform that was the object of the foregoing motion.

WM. FLOMER, *Chairman.*

“And they resolved to have another meeting at the same place, on Saturday, June 1.”

† [COPY.]

“LINCOLN'S INN, Friday, May 10.

“DEAR SIR,—I am extremely sorry that I was not at home when you and the other gentlemen from the Westminster Committee did me the honour to call.

“May I beg the favour of you to express that I am truly happy to find that the motion of Tuesday last has the approbation of such zealous friends to the public, and to assure the Committee that my exertions shall never be wanting in support of a measure which I agree with them in thinking essentially necessary to the independence

Gentlemen, the fashion of this world speedily passeth away. We find these glorious restorers of equal representation determined, *as ministers*, that, so far from every man being an elector, the metropolis of the kingdom should have no election at all, but should submit to the power, or to the softer allurements, of the Crown. Certain it is, that, for a short season, Mr. Frost being engaged *professionally as agent for the Government candidate*, did not (indeed he could not) oppose this inconsistency between the doctrine and practice of his friends, and *in this interregnum of public spirit* he was, in the opinion of Government, a perfect patriot, a faithful friend to the British constitution. As a member of the law he was therefore trusted with Government business in matters of revenue, and was, in short, what all the friends of Government of course are, the best and most approved; to save words, he was like all the rest of them,—just what he should be. But the election being over, and, with it, professional agency; and Mr. Frost, as he lawfully might, continuing to hold his former opinions, which were still avowed and gloried in, though not acted on by his ancient friends, he unfortunately did not change them the other day, when they were thrown off by others; on the contrary, he rather seems to have taken fire with the prospect of reducing them to practice; and being, as I have shown you, bred in a school which took the lead in boldness of remonstrance of all other reformers before or since, he fell, in the heat and levity of wine, into expressions which have no correspondence with his sober judgment; which would have been passed over or laughed at in you or me, but which, coming from him, were never to be forgiven by Government. This is the genuine history of his offence,—for this he is to be the subject of prosecution;—not the prosecution of my learned friend,—not the prosecution of the Attorney-General,—not the prosecution of His Majesty; but the prosecution of Mr. Yatman, who wishes to show you his great loyalty to the State and constitution, which were in danger of falling, had it not been for the drugs of this worthy apothecary.

With regard to the new Government of France, since the subject has been introduced, all I can say of it is this: that the good or evil of it belongs to themselves; that they had a right, like every other people upon earth, to change their government; that the

of Parliament, and the liberty of the people.—I have the honour to be, with great respect and esteem, Sir, your most obedient and most humble servant,

“W. PITT.”

“John Frost, Esq., Percy Street.”

“LINCOLN'S INN, May 12, 1782.”

“SIR,—I have received the favour of your note, and shall be proud to receive the honour intended me by the gentlemen of the Middlesex Committee, at the time you mention.—I am, with great regard, Sir, your most humble servant,

“W. PITT.”

“John Frost, Esq., Percy Street.”

system destroyed was a system disgraceful to free and rational beings, and if they have neither substituted, nor shall hereafter substitute, a better in its stead, they must eat the bitter fruits of their own errors and crimes. As to the horrors which now disfigure and desolate that fine country, all good men must undoubtedly agree in condemning and deploring them, but they may differ nevertheless in deciphering their causes: men to the full as wise as those who pretend to be wiser than Providence, and stronger than the order of things, may perhaps reflect that a great fabric of unwarrantable power and corruption could not fall to the ground without a mighty convulsion,—that the agitation must ever be in proportion to the surface agitated,—that the passions and errors inseparable from humanity must heighten and swell the confusion, and that perhaps the crimes and ambition of other nations, under the mask of self-defence and humanity, may have contributed not a little to aggravate them,—may have tended to embitter the spirits and to multiply the evils which they condemn,—to increase the misrule and anarchy which they seek to disembrace, and in the end to endanger their own governments, which by carnage and bloodshed, instead of by peace, improvement, and wise administration, they profess to protect from the contagion of revolution.

As to the part which bodies of men in England have taken, though it might in some instances be imprudent and irregular, yet I see nothing to condemn, or to support the declamation which we daily hear upon the subject. The congratulations of Englishmen were directed to the fall of corrupt and despotic power in France, and were animated by a wish of a milder and freer government, happier for that country, and safer for this; they were, besides, addressed to France when she was at peace with England, and when no law was therefore broken by the expression of opinion or satisfaction. They were not congratulations on the murders which have since been committed, nor on the desolations which have since overspread so large a portion of the earth, neither were they traitorous to the Government of this country. This we may safely take in trust, *since not one of them, even in the rage of prosecution, has been brought before a criminal court.* For myself, I never joined in any of these addresses, but what I have delivered concerning them is all I have been able to discover, and Government itself, as far as evidence extends, has not been more successful. I would therefore recommend it to His Majesty's servants to attend to the reflections of an eloquent writer, at present high in their confidence and esteem, who has admirably exposed the danger and injustice of general accusations. "*This way of proscribing the citizens by denominations and general descriptions, dignified by the name of reason of State, and security for constitutions and commonwealths, is nothing better at bottom than the miserable invention of an ungenerous ambition, which would fain hold the sacred trust of*

power without any of the virtues or energies that give a title to it; a receipt of policy, made up of a detestable compound of malice, cowardice, and sloth. They would govern men against their will; but in that, Government would be discharged from the exercise of vigilance, providence, and fortitude; and therefore that they may sleep on their watch, consent to take some one division of the society into partnership of the tyranny over the rest. But let Government, in whatever form it may be, comprehend the whole in its justice, and restrain the suspicious by its vigilance, let it keep watch and ward; let it discover by its sagacity, and punish by its firmness, all delinquency against its power, whenever it exists in the overt acts, and then it will be as safe as God and nature intended it should be. Crimes are the acts of individuals, and not of denominations; and therefore arbitrarily to class men under general descriptions, in order to proscribe and punish them in the lump for a presumed delinquency, of which perhaps but a part, perhaps none at all, are guilty, is indeed a compendious method, and saves a world of trouble about proof; but such a method, instead of being law, is an act of unnatural rebellion against the legal dominion of reason and justice, and a vice in any constitution that entertains it, which at one time or other will certainly bring on its ruin." *

Gentlemen, let us now address ourselves to the cause disembarassed by foreign considerations; let us examine what the charge upon the record is, and see how it is supported by the proofs; for unless the whole indictment, or some one count of it, be in form and substance supported by the evidence, the defendant must be acquitted, however in other respects you may be dissatisfied with his imprudence and indiscretion. The indictment charges, "That the defendant, being a person of an impious, depraved, seditious disposition, and maliciously intending to disturb the peace of the kingdom, to bring our most serene Sovereign into hatred and contempt with all the subjects of the realm, and to excite them to discontent against the Government, *he, the said defendant, his aforesaid wicked contrivances and intentions to complete, perfect, and render effectual, on the 6th day of November,*" spoke the words imputed to him by the Crown. This is the indictment, and it is drawn with a precision which marks the true principle of English criminal law. It does not merely charge the speaking of the words, leaving the wicked intention to be supplied and collected by necessary and unavoidable inference, because such inference may or may not follow from the words themselves, according to circumstances, which the evidence alone can disclose; it charges therefore the wicked intention *as a fact*, and as constituting the very essence of the crime, stating, as it must state, to apprise the defendant of the crime alleged against him, the overt act by which such

* Edmund Burke.

malicious purpose was displayed, and by which he sought to render it effectual. No man can be criminal without a criminal intention, —*actus non facit reum nisi mens sit rea*. God alone can look into the heart, and man, could he look into it, has no jurisdiction over it, until society is disturbed by its actions; but the criminal mind being the source of all criminality, the law seeks only to punish actions which it can trace to evil disposition: it pities our errors and mistakes,—makes allowances for our passions, and scourges only our crimes.

Gentlemen, my learned friend the Attorney-General, in the conclusion of his address to you, did more than ratify these propositions; for, with a liberality and candour very honourable to himself, and highly advantageous to the public which he represents, he said to you, that if the expressions charged upon the defendant should turn out, in your opinion, to be unadvised and unguarded, arising on the sudden, and unconnected with previous bad intention, he should not even insist upon the strictness of the law, whatever it might be, nor ask a verdict, but such as between man and man, acting upon moral and candid feelings, ought to be asked and expected. These were the suggestions of his own just and manly disposition, and he confirmed them by the authority of Mr. Justice Forster, whose works are so deservedly celebrated; but judging of my unfortunate client, not from his own charity, but from the false information of others, he puts a construction upon an expression of this great author which destroys much of the intended effect of his doctrine; a doctrine which I will myself read again to you, and by the right interpretation of which I desire the defendant may stand or fall. In the passage read to you, Forster says, "As to mere words, they differ widely from writings in point of REAL MALIGNTY AND PROPER EVIDENCE; they are often the effect of mere heat of blood, which in some natures, otherwise well disposed, carrieth the man beyond the bounds of prudence: they are always liable to great misconstruction from the ignorance or inattention of the hearers, and too often from a motive truly criminal." Forster afterwards goes on to contrast such loose words "*not relative to any act or design*," for so he expresses himself, with "*words of advice and persuasion in contemplation of some traitorous purpose actually on foot or intended, and in prosecution of it*." Comparing this rule of judgment with the evidence given, one would have expected a consent to the most favourable judgment—one would have almost considered the quotation as a tacit consent to an acquittal; but Mr. Attorney-General, still looking through the false medium of other men's prejudices, lays hold of the words "*otherwise well disposed*," and engrafs upon them this most extraordinary requisition. Show me, he says, that Mr. Frost is *otherwise well disposed*. Let him bring himself within the meaning of Forster, and *then* I consent that he shall have the fullest benefit of

his indulgent principle of judgment. Good God, gentlemen, are we in an English court of justice? Are we sitting in judgment before the Chief-Justice of England, with the assistance of a jury of Englishmen? and am I, in such a presence, to be called upon to prove the good disposition of my client before I can be entitled to the protection of those rules of evidence which apply equally to the just and to the unjust, and by which an evil disposition must be proved before it shall even be suspected? I came here to resist and to deny the existence of legitimate and credible proof of disloyalty and disaffection; and am I to be called upon to prove that my client has *not* been, nor is, disloyal or disaffected? Are we to be deafened with panegyrics upon the English constitution, and yet to be deprived of its first and distinguishing feature, that innocence is to be presumed until guilt be established? Of what avail is that sacred maxim, if upon the bare assertion and imputation of guilt, a man may be deprived of a rule of evidence, the suggestion of wisdom and humanity, as if the rule applied only to those who need no protection, and who were never accused? If Mr. Frost, by any *previous overt acts* by which alone any disposition, good or evil, can be proved, had shown a disposition leading to the offence in question, it was evidence for the Crown. Mr. Wood, whose learning is unquestionable, undoubtedly thought so when, with the view of crimination, he asked where Mr. Frost had been before the time in question, for he is much too correct to have put an irregular and illegal question in a criminal case; I must therefore suppose his right to ask it appeared to him quite clear and established, and I have no doubt that it was so. Why then did he not go on and follow it up by asking what he had done in France? what declarations he had made *there*, or what part he proposed to act *here*, upon his return? The charge upon the record is, that the words were uttered with malice and premeditation; and Mr. Attorney-General properly disclaims a conviction upon any other footing. Surely then it was open to the Crown, upon every principle of common sense, to have proved the previous malice by all previous discourses and previous conduct, *connected with the accusation*; and yet, after having wholly and absolutely failed in this most important part of the proof, we are gravely told that the Crown, having failed in the *affirmative*, we must set about establishing the *negative*, for that otherwise we are not within the pale or protection of the very first and paramount principles of the law and government of the country.

Having disposed of the stumbling-block in the way of sound and indulgent judgment, we may now venture to examine *THIS mighty offence as it is proved by the witnesses for the Crown, supposing the facts neither to have been misstated from misapprehension, nor wilfully exaggerated.*

Mr. Frost, the defendant, a gentleman who upon the evidence

stands wholly unimpeached of any design against the public peace, or any indisposition to the constitution of the kingdom, appears to have dined at the tavern over the Percy Coffee-house—not even with a company met upon any political occasion, good or evil, but, as has been admitted in the opening, with a society for the *Encouragement of Agriculture*, consisting of most reputable and inoffensive persons, neither talking nor thinking about Government or its concerns: so much for the preface to this dangerous conspiracy. The company did not retire till the bottle had made many merry circles; and it appears upon the evidence for the Crown that Mr. Frost, *to say the least*, had drunk very freely; but was it then that, with the evil intention imputed to him, he went into this coffee-house to circulate his opinions, and to give effect to designs he had premeditated. *He could not possibly go home without passing through it*; for it is proved that there was no other passage into the street from the room where he had dined; but having got there by accident, did he even then stop by design and collect an audience to scatter sedition? So far from it, that Mr. Yatman, the very witness against him, admits that he interrupted him as he passed in silence towards the street, and fastened the subject of France upon *him*; and every word which passed (*for the whole is charged upon the very record as a dialogue with this witness*), in answer to his *entrapping questions*, introduced with the familiarity of a very old acquaintance, and in a sort of banter too, which gave a turn to the conversation which renders it ridiculous as well as wicked to convert it into a serious plan of mischief. “Well,” says Mr. Yatman, “well, Mr. Equality, so you have been in France—when did you arrive? I suppose you are for equality and no kings?” “Oh yes,” says Mr. Frost, “certainly I am for equality; I am for no kings.” Now, beyond all question, when this answer was made, whether in jest or in earnest, whether when drunk or sober, it neither had nor *could* have the remotest relation to ENGLAND OR ITS GOVERNMENT. France had just abolished its new constitution of monarchy, and set up a republic; she was at that moment divided and in civil confusion on the subject; the question therefore, and the answer, as they applied to France, were sensible and relevant; but to England or to English affairs they had not (except in the *ensnaring* sequel) the remotest application. Had Yatman therefore ended here, the conversation would have ended, and Mr. Frost would have been the next moment in the street; but still the question is forced upon him, and he is asked, “What! no kings in England?” although his first answer had no connexion with England; the question, therefore, was self-evidently a snare; to which he answered, “No kings in England,” which seemed to be all that was wanted, for in a moment everything was confusion and uproar; Mr. Frost, who had neither delivered nor meant to deliver any serious opinion concerning government, and finding himself in-

juriously set upon, wished, as was most natural, to explain himself, by stating to those around him what I have been just stating to you; but all in vain: they were in pursuit of the immortal fame of the very business we are engaged in at this moment, and were resolved to hold their advantage,—his voice was immediately drowned by the clamours of insult and brutality,—he was baited on all sides like a bull, and left the coffee-house without the possibility of being heard either in explanation or defence. An indictment was immediately preferred against him, and from that moment the public ear has been grossly and wickedly abused upon the subject, his character shamefully calumniated, and *his cause pre-judged before the day of trial.*

Gentlemen, it is impossible for me to form any other judgment of the impression which such a proceeding altogether is likely to make upon your minds but from that which it makes upon *my own*. In the first place, is society to be protected by the breach of those confidences, and in the destruction of that security and tranquillity, which constitute its very essence everywhere, but which, till of late, most emphatically characterised the life of an Englishman? Is Government to derive dignity and safety by means which render it impossible for any man who has the least spark of honour to step forward to serve it? Is the time come when obedience to the law and correctness of conduct are not a sufficient protection to the subject, but that he must measure his steps, select his expressions, and adjust his very looks in the most common and private intercourses of life? Must an English gentleman in future fill his wine by a measure, lest, in the openness of his soul, and whilst believing his neighbours are joining with him in that happy relaxation and freedom of thought which is the prime blessing of life, he should find his character blasted and his person in a prison? Does any man put such constraint upon himself in the most private moment of his life, that he would be contented to have his loosest and lightest words recorded, and set in array against him in a court of justice? Thank God, the world lives very differently, or it would not be worth living in. There are moments when jarring opinions may be given without inconsistency, when truth herself may be sported with without the breach of veracity, and where well-imagined nonsense is not only superior to, but is the very index to wit and wisdom. I might safely assert, taking too for the standard of my assertion, the most honourably correct and enlightened societies in the kingdom, that if malignant spies were properly posted, scarcely a dinner would end without a duel and an indictment.

When I came down this morning and found, contrary to my expectation, that we were to be stuffed into this miserable hole in the wall,* to consume our constitutions, suppose I had muttered along

* The King's Bench sat in the small Court of Common Pleas, the impeachment having shut up its own court.—Ed.

through the gloomy passages, "What! is this cursed trial of Hastings going on again? Are we to have no respite? Are we to die of the asthma in this damned corner? I wish to God that the roof would come down and abate the impeachment, Lords, Commons, and all together." *Such a wish, proceeding from the mind*, would be desperate wickedness, and the serious expression of it a high and criminal contempt of Parliament. Perhaps the bare utterance of such words, even without meaning, would be irreverent and foolish. But still, if such expressions had been gravely imputed to me as the result of a malignant mind, seeking the destruction of the Lords and Commons of England, how would they have been treated in the House of Commons on a motion for my expulsion? How! The witness would have been laughed out of the House before he had half finished his evidence, and would have been voted to be too great a blockhead to deserve a worse character. Many things are indeed wrong and reprehensible, that neither do nor can become the objects of criminal justice, because the happiness and security of social life, which are the very end and object of all law and justice, forbid the communication of them; because the spirit of a gentleman, which is the most refined morality, either shuts men's ears against what should not be heard, or closes their lips with the sacred seal of honour.

This tacit but well understood and delightful compact of social life is perfectly consistent with its safety. The security of free governments, and the unsuspecting confidence of every man who lives under them, are not only compatible but inseparable. It is easy to distinguish where the public duty calls for the violation of the private one; criminal intention, but not indecent levities—not even grave opinions unconnected with conduct—are to be exposed to the magistrate; and when men, which happens but seldom, without the honour or the sense to make the due distinctions, force complaints upon governments which they can neither approve of nor refuse to act upon, it becomes the office of juries, as it is yours to-day, to draw the true line in their judgments, measuring men's conduct by the safe standards of human life and experience.

Gentlemen, the misery and disgrace of society, under the lash of informers, running before the law and hunting men through the privacies of domestic life, is described by a celebrated speaker* with such force and beauty of eloquence, that I will close my observations on this part of the subject by repeating what cannot, I am persuaded, be uttered amongst Englishmen without sinking deep into their hearts:—"A mercenary informer knows no distinction. Under such a system, the obnoxious people are slaves, not only to the Government, but they live at the mercy of every individual; they are at once the slaves of the whole community and of

* Edmund Burke.

every part of it ; and the worst and most unmerciful men are those on whose goodness they most depend.

" In this situation men not only shrink from the frowns of a stern magistrate, but are obliged to fly from their very species. The seeds of destruction are sown in civil intercourse and in social habitudes. The blood of wholesome kindred is infected. Their tables and beds are surrounded with snares. All the means given by Providence to make life safe and comfortable are perverted into instruments of terror and torment. This species of universal subserviency, that makes the very servant who waits behind your chair the arbiter of your life and fortune, has such a tendency to degrade and abase mankind, and to deprive them of that assured and liberal state of mind which alone can make us what we ought to be, that I vow to God, I would sooner bring myself to put a man to immediate death for opinions I disliked, and so to get rid of the man and his opinions at once, than to fret him with a feverish being, tainted with the jail distemper of a contagious servitude, to keep him above ground, an animated mass of putrefaction, corrupted himself and corrupting all about him."

If these sentiments apply so justly to the reprobation of persecution for opinions, even for opinions which the laws, however absurdly, inhibit—for opinions though certainly and maturely entertained, though publicly professed, and though followed up by corresponding conduct ; how irresistibly do they devote to contempt and execration all eavesdropping attacks upon loose conversations, casual or convivial, more especially when proceeding from persons conforming to all the religious and civil institutions of the State, unsupported by general and avowed profession, and not merely unconnected with conduct, but scarcely attended with recollection or consciousness ! Such a vexatious system of inquisition, the disturber of household peace, began and ended with the Star-Chamber ; the venerable law of England never knew it ; her noble, dignified, and humane policy soars above the little irregularities of our lives, and disdains to enter our closets without a warrant founded upon complaint. Constructed by man to regulate human infirmities, and not by God to guard the purity of angels, it leaves to us our thoughts, our opinions, and our conversations, and punishes only overt acts of contempt and disobedience to her authority.

Gentlemen, this is not the specious phrase of an advocate for his client ; it is not even my exposition of the spirit of our constitution, but it is the phrase and letter of the law itself. In the most critical conjunctures of our history, when Government was legislating for its own existence and continuance, it never overstepped this wise moderation. To give stability to establishments, it occasionally bridled opinions concerning them, but its punishments, though sanguinary, *laid no snares for thoughtless life*, and took no man by surprise.

Of this the Act of Queen Anne, which made it high treason to deny the right of Parliament to alter the succession, is a striking example. The hereditary descent of the Crown had been recently broken at the Revolution by a minority of the nation, with the aid of a foreign force, and a new inheritance had been created by the authority of the new establishment, which had but just established itself. Queen Anne's title, and the peaceable settlement of the kingdom under it, depended wholly upon the constitutional power of Parliament to make this change; the superstitions of the world, and reverence for antiquity, which deserves a better name, were against this power and the use which had been made of it; the dethroned King of England was living in hostile state at our very doors, supported by a powerful monarch at the head of a rival nation, and our own kingdom itself full of factious plots and conspiracies, which soon after showed themselves in open rebellion.

If ever, therefore, there was a season when a narrow jealousy could have been excusable in a Government,—if ever there was a time when the sacrifice of some private liberty to common security would have been prudent in a people, it was at such a conjuncture; yet, mark the reserve of the Crown, and the prudence of our ancestors, in the wording of the statute. Although the denial of the right of Parliament to alter the succession was tantamount to the denial of all legitimate authority in the kingdom, and might be considered as a sort of abjuration to the laws, yet the statute looked at the nature of man, and to the private security of individuals in society, while it sought to support the public society itself;—it did not, therefore, dog men into taverns and coffee-houses, nor lurk for them at corners, nor watch for them in their domestic enjoyments. The Act provides, "That every person who should maliciously, advisedly, and directly, by *writing or printing*, affirm that the Queen was not the rightful Queen of these realms; or that the Pretender had any right or title to the Crown; or that any other person had any right or title, otherwise than according to the Acts passed since the Revolution for settling the succession; or that the Legislature hath not sufficient authority to make laws for limiting the succession, should be guilty of high treason, and suffer as a traitor;" and then enacts, "That if any person shall *maliciously and directly, by preaching, teaching, or advised speaking*, declare and maintain the same, he shall incur the penalties of a *præmunire*."

"I will make a short observation or two," says Forster, "on the Act:—First, The positions condemned by them had as direct a tendency to involve these nations in the miseries of an intestine war, to incite Her Majesty's subjects to withdraw their allegiance from her, and to deprive her of her crown and royal dignity, as any general doctrine, any declaration *not relative to actions or designs*, could possibly have; and yet in the case of bare words,

positions of this dangerous tendency, though maintained *maliciously, advisedly, and directly*, and even in the solemnities of *preaching and teaching*, are not considered as overt acts of treason.

"Secondly, In no case can a man be *argued* into the penalties of the Act by inferences and conclusions drawn from what he hath affirmed; the criminal position must be *directly* maintained to bring him within the compass of the Act.

"Thirdly, Nor will every rash, hasty, or unguarded expression, owing perhaps to natural warmth, or thrown out in the heat of disputation, render any person criminal within the Act; the criminal doctrine must be maintained *maliciously and advisedly*."

He afterwards adds: "Seditious writings are permanent things; and if published, they scatter the poison far and wide. They are acts of deliberation, capable of satisfactory proof, and not ordinarily liable to misconstruction; at least they are submitted to the judgment of the Court naked and undisguised, as they came out of the author's hands. Words are transient and fleeting as the wind; the poison they scatter is, at the worst, confined to the narrow circle of a few hearers; they are frequently the effect of a sudden transport, easily misunderstood, and often misrepresented."

Gentlemen, these distinctions, like all the dictates of sound policy, are as obvious to reason as they are salutary in practice. What a man writes that is criminal and pernicious, and disseminates when written, is conclusive of his purpose;—he manifestly must have deliberated on what he wrote, and the distribution is also an act of deliberation. *Intention in such cases* is not, therefore, matter of legal proof, but of reasonable *inference*, unless the accused, by proof on his side, can rebut what reason must otherwise infer: since he who writes to others undoubtedly seeks to bring over other minds to assimilate with his own. So he who advisedly speaks to others upon momentous subjects, may be presumed to have the same intention; but yet, so frail is memory—so imperfect are our natures—so dangerous would it be to place *words*, which, to use the language of Forster, are transient and fleeting, upon a footing with deliberate *conduct*, that the criminating letter of the law itself interposes the check, and excludes the danger of a rash judgment, by curiously selecting from the whole circle of language an expression which cannot be mistaken: for nothing said upon the sudden, without the evidence of a context, and sequel in thought or conduct, can in common sense deserve the title of advised speaking. Try the matter before you upon the principle of the statute of Queen Anne, and examine it with the caution of Forster.

Suppose, then, that instead of the words imputed by this record, the defendant, coming half-drunk through this coffee-house, had, in his conversation with Yatman, denied the right of Parliament to alter the succession. Could he have been adjudged to suffer death

for high treason under the statute of Queen Anne? Reason and humanity equally revolt at the position; and yet the decision asked from you is precisely that decision; for if you could not have found advised speaking to bring it within that statute of treason, so neither can you find it as the necessary evidence of the intention charged upon the present indictment, which intention constitutes the misdemeanour.

If anything were wanting to confirm these principles of the law and the commentaries of its ablest judges, as applicable to words, they are in another way emphatically furnished by the instance before us;—for in the zeal of these coffee-house politicians to preserve the defendant's expressions, they were instantly to be put down in writing, and signed by the persons present; yet the paper read by Colonel Bullock, and written, as he tells you, at the very moment with that intention, contains hardly a single word, from the beginning to the end of it, either in meaning or expression, the same as has been related by the witnesses. It sinks, in the first place, the questions put to the defendant; and the whole dialogue, which is the best clue to the business, and records "*that Mr. Frost came into the coffee-house, and declared,*" an expression which he never used, and which wears the colour of deliberation, "*that he wished to see equality prevail in this country.*" Another expression which it is now agreed on all hands he never uttered, and which conveys a very different idea from saying, in answer to an impertinent or a taunting question, "Oh, yes! I am for equality." I impute nothing at all to Colonel Bullock, who did not appear to me to give his evidence unfairly: he read his paper as he wrote. But this is the very strength of my observation: for suppose the case had not come for months to trial, the other witnesses (and honestly too) might have let their memories lean on the written evidence, and thus you would have been trying, and perhaps condemning, the defendant for speaking words, stript too of their explanatory concomitants, which it stands *confessed at this moment were never spoken at all*.

Gentlemen, the disposition which has of late prevailed to depart from the wise moderation of our laws and constitution, under the pretext or from the zeal of preserving them, and which has been the parent of so many prosecutions, is an awful monument of human weakness. These associators to prosecute, who keep watch of late upon our words and upon our looks, are associated, it seems, to preserve our excellent constitution from the contagion of France, where an arbitrary and tyrannous democracy, under the colour of popular freedom, destroys all the securities and blessings of life. But how does it destroy them? How, but by the very means that these new partners of executive power would themselves employ, if we would let them—by inflicting, from a mistaken and barbarous state necessity, the severest punishments for offences never de-

fined by the law;—by inflicting them upon suspicion instead of evidence, and in the blind, furious, and indiscriminate zeal of persecution, instead of by the administration of a sober and impartial jurisprudence. Subtracting the horrors of invading armies, which France cannot help, what other mischief has she inflicted upon herself? From what has she suffered but from this undisciplined and cruel spirit of accusation and rash judgment? A spirit that will look at nothing dispassionately, and which, though proceeding from a zeal and enthusiasm for the most part honest and sincere, is nevertheless as pernicious as the wicked fury of demons, when it is loosened from the sober dominion of slow and deliberate justice. What is it that has lately united all hearts and voices in lamentation? What but these judicial executions, which we have a right to style murders, when we see the axe falling and the prison closing upon the genuine expressions of the inoffensive heart: sometimes for private letters to friends, unconnected with conduct or intention; sometimes for momentary exclamations in favour of royalty, or some other denomination of government different from that which is established.

These are the miseries of France—the unhappy attendants upon revolution; and united as we all are in deploring them, upon what principle of common sense shall we vex and terrify the subjects of our own country in the very bosom of peace, and disgust them with the Government which we wish them to cherish, by unusual, irritating, and degrading prosecutions?

Indeed, I am very sorry to say that we *hear* of late too much of the excellence of the British Government, and *feel* but too little of its benefits. They too who pronounce its panegyrics, are those who alone prevent the entire public from acceding to them; the eulogium comes from a suspected quarter when it is pronounced by persons enjoying every honour from the Crown, and treating the people, upon all occasions, with suspicion and contempt. The three estates of the kingdom are co-ordinate, all alike representing the dignity, and jointly executing the authority, of the nation: yet all our loyalty seems to be wasted upon one of them. How happens it else, that we are so exquisitely sensible, so tremblingly alive to every attack upon the Crown, OR THE NOBLES that surround it, yet so completely careless of what regards THE ONCE RESPECTED AND AWFUL COMMONS OF GREAT BRITAIN?

If Mr. Frost had gone into every coffee-house from Charing Cross to the Exchange, lamenting the dangers of popular government, reprobating the peevishness of opposition in Parliament, and wishing, in the most advised terms, that we could look up to the throne and its excellent ministers alone for quiet and comfortable government, do you think that we should have had an indictment? I ask pardon for the supposition: I can discover that you are laughing at me for its absurdity. Indeed, I might ask you

whether it is not the notorious language of the highest men, in and out of Parliament, to justify the alienation of the popular part of the Government from the spirit and principle of its trust and office, and to prognosticate the very ruin and downfall of England, from a free and uncorrupted representation of the great body of the people? I solemnly declare to you, that I think the whole of this system leads inevitably to the dangers we seek to avert: it divides the higher and the lower classes of the nation into adverse parties, instead of uniting and compounding them into one harmonious whole: it embitters the people against authority, which, when they are made to feel and know is but their own security, they must, from the very nature of man, unite to support and cherish. I do not believe that there is any set of men to be named in England—I might say that I do not know an individual—who seriously wishes to touch the Crown, or any branch of our excellent constitution; and when we hear peevish and disrespectful expressions concerning any of its functions, depend upon it, it proceeds from some practical variance between its theory and its practice. These variances are the fatal springs of disorder and disgust: they lost America, and in that unfortunate separation laid the foundation of all that we have to fear: yet instead of treading back our steps, we seek recovery in the system which brought us into peril. Let Government in England always take care to make its administration correspond with the true spirit of our genuine constitution, and nothing will ever endanger it. Let it seek to maintain its corruptions by severity and coercion, and neither laws nor arms will support it. These are my sentiments, and I advise you, however unpopular they may be at this moment, to consider them before you repel them.

If the defendant, amongst others, has judged too lightly of the advantages of our Government, reform his errors by a beneficial experience of them; above all, let him feel its excellence to-day in its beneficence: let him compare, in his trial, the condition of an English subject with that of a citizen of France, which he is supposed in theory to prefer. These are the true criterions by which, in the long run, individuals and nations become affectionate to governments, or revolt against them: for men are neither to be talked nor written into the belief of happiness and security, when they do not practically feel them, nor talked or written out of them, when they are in the full enjoyment of their blessings: but if you condemn the defendant upon this sort of evidence, depend upon it, he must have his adherents, and, as far as that goes, I must be one of them.

Gentlemen, I will detain you no longer, being satisfied to leave you, as conscientious men, to judge the defendant as you yourselves would be judged; and if there be any amongst you who can say to the rest that he has no weak or inconsiderate moments—that

all *his* words and actions, even in the most thoughtless passages of his life, are fit for the inspection of God and man, he will be the fittest person to take the lead in a judgment of guilty, and the most proper foreman to deliver it with good faith and firmness to the Court.

I know the privilege that belongs to the Attorney-General to reply to all that has been said; but perhaps, as I have called no witnesses, he may think it a privilege to be waived. It is, however, pleasant to recollect, that if it should be exercised, even with his superior talents, his honour and candour will guard it from abuse.

Lord KENYON, having summed up the evidence, the jury retired for an hour and a half, and then returned with a verdict, GUILTY.

*TRIAL of Mr. PERRY and Mr. LAMBERT, Editor and Printer of
the "Morning Chronicle," for a Libel, on the information of
the ATTORNEY-GENERAL, on 9th December 1793.*

THE SUBJECT.

The Attorney-General's information charged the defendants, Mr. Perry and Mr. Lambert, as editor and printer of the *Morning Chronicle*, with publishing an address of a Society for political information, held at the Talbot Inn, at Derby, which had been sent to the *Morning Chronicle* for insertion, in the ordinary course of business; neither Mr. Perry nor Mr. Lambert having had any kind of connexion or correspondence with the authors.

THE SPEECH.

With the two gentlemen charged in the information as proprietors of the *Morning Chronicle*, I have been long and well acquainted. Of Mr. John Lambert, who conducts the mechanical part of the printing business, I have no personal knowledge; but from my intimate acquaintance with the other two, I have no difficulty in saying that if I had in my soul the slightest idea that they were guilty, as charged in the information, of malicious and wicked designs against the State, I should leave the task of defending them to others. Not that I conceive I have a right to refuse my professional assistance to any man who demands it, but I have for a day or two past been so extremely indisposed that I feel myself scarcely equal to the common exertion of addressing the Court; and it is only from the fullest confidence in the innocence of the defendants that I came forward for a very short space to solicit the attention of the jury. You, gentlemen, indeed, are the sole arbitrators in this cause, and to you it belongs to decide on the whole merits of the question. Mr. Attorney-General has already given a history of the prosecution, which was originally taken up by his predecessor, now called to a high situation in his profession. I do not mean, by anything I shall say, to impute unbecoming conduct to either of those respectable gentlemen for the part which they have taken in this business; they no doubt brought it forward because they considered it as a proper matter for the discussion of a jury. I take it for granted that they would not have acted

so but from a sense of duty. Be this, however, as it may, the weight of their characters ought to have no influence upon your minds against the defendants. It would be dangerous to justice indeed if, because a charge was brought by a respectable Attorney-General, it were to be received as an evidence of guilt which ought at all to bias the judgment or affect the decision of the jury. It is the privilege of every British subject to have his conduct tried by his peers, and his guilt or innocence determined by them. In this case, Mr. Attorney-General has given no judgment; he has taken up the business merely in the course of his professional duty. The whole of the matter comes before you, gentlemen of the jury, who of course will reject everything that can have a tendency to influence your decision independently of the merits of the cause; you will suffer no observation that may fall from my learned friend, or from myself, to interfere with your own honest and unbiassed judgments. You are to take everything that relates to the case into *your own* consideration; you are to consult only *your own* judgments; you are to decide, as you are bound by your duty, according to your own conscience; and your right to decide fully, on every point, is clearly ascertained by the law of libels. To the Act lately passed you are to look as the only rule of your conduct in the exercise of your functions.

With respect to the interpretation of that Act, I must confess that my learned friend and I materially differ. In one principle, however, we entirely agree—that a case of libel is to be tried exactly as any other criminal case; this point, indeed, he has most correctly stated. When a man accused of a libel is brought before a jury, they are to consider only the mind and intention with which the matter was written, and accordingly as they shall find that they are to form their decision of guilt or innocence. They are to dismiss every other consideration, and allow themselves to be biassed by no motive of party or political convenience. There is this essential difference between criminal and civil cases: in criminal cases, the jury have the subject entirely in their own hands; they are to form their judgment upon the whole of it, not only upon the act alleged to be criminal, but the motive by which it was influenced, the intention with which it was committed; and, according to their natural sense of the transaction, they ought to find a man innocent or guilty, and their verdict is conclusive. Not so in civil cases. In these the jury are bound to abide in their decision by the law as explained by the Judge; they are not at liberty to follow their own opinions. For instance, if I am deprived of any part of my property, the loss of my property lays a foundation for an action, and the fact being found, the jury are bound to find a verdict against the person who has occasioned my loss, whatever might be his intentions. Here the Judge pronounces the law, the jury only find the fact. The law and the fact are as distinct

and separate as light from darkness ; nor can any verdict of a jury pass for a farthing in opposition to the law, as laid down by the Judge, since the courts have a power to set such a verdict aside. But in criminal cases, the very reverse has been immemorially established ; the law and the fact have been inseparably joined ; the intention of the party accused is the very gist of the case. We are **CRIMINAL** only in the eyes of God and man, as far as the mind and intention in committing any act has departed from the great principles of rectitude by which we are bound as moral agents, and by the indispensable duties of civil society. It is not the act itself, but the motive from which it proceeds, that constitutes guilt ; and the general plea, therefore, in all criminal cases, is not guilty. Such is the answer which the justice and clemency of our laws have put into the mouth of the accused, leaving him the right of acquittal if the circumstances of the transaction shall be found to exculpate his motives.

The criminality of a person under the Libel Act is not to be taken as an inference of law from the fact, as Mr. Attorney-General has stated it, but (if as one of the authors of that bill I may be allowed to interpret its meaning) it connects and involves the law and the fact together, and obliges the jury to find in this crime, as in all others, by extrinsic as well as intrinsic means, the mind and intention with which the fact was committed. Nothing can be more simple than the doctrine. It goes directly to the reason of the thing. Two men, for instance, are in company, and one of them is killed. It is not an inference in the law from the fact of the killing that the person was guilty of murder ; it might be manslaughter, justifiable homicide, chance-medley, or it might be murder : the fact does not infer the crime ; it is the intention with which the act was committed, and this the jury are bound to discover and decide upon from all the accompanying circumstances. If I had been wrong in holding this opinion, all my opposition to that great luminary of the law now departed,* but who will always live in public memory, was wrong and false. I revered his venerable authority ; I admired the splendour of his talents, which illustrated the age he lived in ; and perhaps ages will pass without producing his rival. I still opposed him, in the meridian of his fame, on the doctrine that the law of libel was an inference from the fact ; and now the Legislature have solemnly confirmed my opinion, that the law and fact are compounded together, and are both to be found by the jury. I could not have held up my head in this court, nor in the world, if it had been adjudged otherwise ; and how my learned friend can hold an opinion that the question of libel is to be tried precisely like all other criminal cases, and yet that criminal intent is an inference of law, I am utterly at a loss to comprehend. I aver that you are solemnly set in judgment on the hearts of the

* Lord Mansfield.

defendants in the publication of this paper ; you are to search for their intention by every means which can suggest itself to you ; you are bound to believe in your consciences that they are guilty of malicious and wicked designs, before you can pronounce the verdict of GUILTY. It is not because one of them published the paper, or because the others are proprietors of it, but because they were, or were not, actuated by an evil mind, and had seditious intentions, that you must find them guilty or not guilty. Such was the opinion of the venerable Hale. He clearly stated that such should be the charge given to you by the Judge. It is their sacred function to explain to you their opinion, but not to force it upon you as a *RULE* for yours. A jury will always listen with reverence to the solemn opinion of the Judge ; but they are bound to examine that opinion as rigorously as that of an advocate at the Bar ; they cannot, and they ought not, to forget that a judge is human, like themselves, and of course not exempt from the infirmities of man. I do not say this to inspire you with any jealousy of the explanations which may be given you by the noble and learned Judge who presides here with so much wisdom, integrity, and candour ; and whose ability in explaining the law derives both force and lustre from the impartiality which so eminently distinguishes him in the discharge of the duties of his office.

I now come to the consideration of the question : What is the charge against the defendants ? Let us look to the indictment, which sets out with referring to His Majesty's proclamation which had appeared against all seditious writings previous to the publication of the libel. I will not here talk of the propriety of that proclamation ; it is not now my business here to enter into political questions ; I have a privilege to discuss them in another place. I will suppose the proclamation to have been dictated by a wise and prudent policy ; I will give credit to it as a measure of salutary precaution and useful tendency. I will only remind its authors when it was issued. It was issued at a period the most extraordinary and eventful which ever occurred in the annals of mankind ; at a period when we beheld ancient and powerful monarchies overturned—crumbled into dust, and republics rising upon their ruins ; when we beheld despotic monarchy succeeded by the despotism of anarchy. In this state of alarm, confusion, and devastation in other countries, the defendants are accused by this information of wickedly, maliciously, and seditiously endeavouring to discharge His Majesty from the hearts of his subjects, and to alienate the people of England from what their affections were riveted on—a limited and well-regulated monarchy. The proclamation appeared professedly to check a spirit of innovation which had already displayed itself by such alarming effects in a neighbouring country, and which it was feared, by its authors, might in its progress become fatal to all establishments. How, then, can this paper be

deemed seditious in the spirit of that proclamation? It was not surely against a reform in our own constitution, which this paper recommends, that the proclamation was pointed, but against those who, in imitation of that neighbouring country, wished to establish a republican anarchy. Can any man produce a single expression which, in the smallest degree, countenances such a system? How, then, can this paper be urged to be published in defiance of His Majesty's authority, or to have a tendency to alienate the minds of his subjects from his government? A proclamation is always considered as the act of Ministers; it becomes the fair subject of discussion; nor do the contents of this paper at all breathe a spirit either disrespectful to His Majesty's person or injurious to his government.

If you, gentlemen of the jury, can think that the defendants were actuated by the criminal motive, not of wishing to reform and restore the beautiful fabric of our constitution, somewhat impaired by time, but to destroy and subvert it, and to raise on its ruins a democracy or anarchy—an idea at which the mind of every honest man must shudder—you will find them guilty. Nay, if any one man knows or believes them to be capable of entertaining such a wish, or will say he ever heard or had cause to know that one sentence intimating anything of that nature ever fell from the lips of any one of them, I will give them up. How they came to be so charged upon the record I cannot tell: there are not among His Majesty's subjects men better disposed to the Government under which they live than the defendants. There have appeared in the *Morning Chronicle*, day after day, advertisements to a vast number warning the people of this country against seditious persons, and against the effects of seditious publications. How any jury can be brought to think the defendants are what they are stated to be on the record I know not. The information states that the defendants being wicked, malicious, seditious, and ill-disposed persons, did *wilfully, wickedly, maliciously, and seditiously*, publish a certain *malicious, scandalous, and seditious* libel against the Government of this kingdom, against its peace and tranquillity, and to stir up revolt, and to encourage His Majesty's subjects to resistance against his person and government. This is the charge. All records have run in this form from the most remote antiquity in the law of England, for the purpose of charging the defendant expressly and emphatically with an evil intention. So we charge a man accused of treason—so of murder—so of all worst and most dangerous crimes: first, we begin with the intention, and then we state the overt act as evidence of that intention which constitutes the crime. Now the record charges these defendants with this evil intention, and that, in order to give effect to that intention, they did publish the paper now before the jury. Such is the charge. Mr. Attorney-General has stated to you in his opening, that if it shall appear to you that the paper in question was not *written*

with a good intention by its authors, then the defendants are guilty of the crime imputed to them upon the record. This I deny. Your Lordship will recollect the case of the King and Stockdale; and I shall leave to the jury in *this*, as your Lordship did in *that* case, the question of the intention of the party from the context of the whole publication, and the circumstances attending it; and upon this I will maintain that it is not sufficient that it should appear the paper was written with a criminal intention by its author, or that the paper itself was criminal, but that it must also appear that the defendants *published it with a criminal intention*. Here, as in every other case, the great maxim of the law is to be recollected—*actus non facit reum*; the mere act, taken by itself, and separated from the intention, can never in any instance constitute guilt. There is no evidence who are the authors of this paper; the Attorney-General has not proved or shown in any way that the person who composed the paper was of the description which the record states the defendants to be. If the design of the writers of this paper was so mischievous, then the Society that gave it birth were seditious and evil-disposed men. What steps have been taken to discover and hunt out this treason? Have the Society been prosecuted, or any of its members? Has the writer been sought after and punished? No such thing. At Derby all is quiet. No sedition has been found lurking there—no prosecution has been instituted against any person whatever for this paper. But it has been said the paper itself will prove the seditious design. After reading it over and over again, and paying to it all the attention possible, I protest I cannot discover any such tendency; on the contrary, I can very well conceive that the man who wrote it might honestly be induced to write and circulate it, not only with the most unblemished intentions, but from motives of the purest attachment to the constitution of the country, and the most ardent wishes for the happiness of the people.

I can conceive that he had no other object in pointing out the defects of the constitution than to show the necessity of a reform which might bring it back to its ancient principles, and establish it in its original purity. Animated by those wishes, the author was naturally enough led to advert to what was passing on the continent of Europe, and to consider how far it might affect the interests of his country and the attainment of his favourite object. He was thence led to conclude that nothing could be more fatal to us, or more likely to increase the calamities under which we have already suffered, than an interference in those destructive wars which were ravaging Europe, and against which every good citizen, as well as every friend to humanity, ought to enter his protest. This may be gathered from the conclusion of the fourth section of the paper:—“We are certain our present heavy burdens are owing, in a great measure, to cruel and impolitic wars, and therefore we will do all

on our part, as peaceable citizens, who have the good of the community at heart, to enlighten each other, and to protest against them." Here it is evident that the author considers the state of the representation as the cause of our present evils, and to a constitutional reform of Parliament he looks as their remedy. In the conclusion of the fifth section he thus explicitly states his sentiments:—"An equal and uncorrupt representation would, we are persuaded, save us from heavy expenses, and deliver us from many oppressions; we will therefore do our duty to procure this reform, which appears to us of the utmost importance." How is it proposed to procure this reform? Why, "by constitutional means—by the circulation of truth in a peaceable, calm, unbiassed manner." Can this then be maliciously intended? Does it fall within the Attorney-General's description of sedition? Is it fit that a subject of this country should be convicted of a crime, and subjected to heavy punishment for publishing that abuses subsist in the government of this country, and arguing from thence the necessity for reform? Mr Attorney-General seems to admit that a man may publish, if he pleases, the evils which appear to him to subsist; but he qualifies it by saying, that when he points out the defects he should point out also the advantages arising from our representation—that he should state the blessings we enjoy from the mixed nature of our monarchy—that if he draws the gloomy part, he should present us also with the bright side of the picture, in order that we may see the whole together, and be able to compare what is beautiful with what is deformed in the structure of our Government. I must own I was rather surprised to hear such an argument from my learned friend; I can hardly think the observation fair, or by any means worthy of his enlightened understanding. He must know that when a zealous man pours out his thoughts, intent on urging a particular point, he confines himself to the question he has in view—he directs his whole attention to illustrate and enforce it, and does not think it necessary to run into every angle and corner to rake together heterogeneous materials, which, though they may be connected with the general subject, are foreign to his particular purpose.

No man, if he felt himself goaded by the excise laws, could be expected, in his petition for redress, to state all the advantages which arose to the State out of the other branches of the revenue. If this were to be adopted as a rule, a man could not complain of a grievance, however intolerable he felt it to himself, without also stating the comforts which were enjoyed by others. Is a man not to be permitted to seek redress from any part of the government under which he lives, and to support which he contributes so much, unless, in enumerating his particular grievance, he enters into a general panegyric on the constitution? Will Mr. Attorney-General say to-day that this is the law of libel?

This very point has been most admirably touched upon by a person who ranks in the highest class of genius, and whose splendid and powerful talents, once exerted in the cause of the people, may possibly bear away the palm in the minds of posterity from the most illustrious names of Greece and Rome.

Mr. Burke, in his "Reflections on the Affairs of France," at the commencement of the Revolution, most justly observes, that when a man has any particular thing in view, he loses sight for a time even of his own sentiments on former occasions: when that right honourable gentleman was asked by those who had so often listened to his eloquence in favour of the people, why he had excluded his former favourite topic from a share in his work, and made monarchy the sole subject of his vindication and panegyric? Whatever may belong to the work itself, the answer which he gave upon that occasion must be admitted to be sound and forcible. When the rights of the people appeared to him to be in danger, from the increasing and overpowering influence of the Crown, he brought forward, he said, sentiments favourable to such rights. But when monarchy was in danger, monarchy became the object of his protection; the rights of the people were nothing to him then; they did not form the subject of his book; his object was to show where the danger lay; and the beautiful illustration from Homer, relative to the death of Hector, was most applicable:—"When his body was placed before the aged king, his other sons surrounded him, anxious to afford that consolation which so great a calamity required; the unhappy father, as if offended with their tenderness, flung his affectionate offspring from him like a pestilence. Was it that the inanimate and useless corpse was dearer to the parent than the living children? No. But his mind was so absorbed, so buried in the fate of Hector, that he was for a while incapable of entertaining any other impression." So said the author of that book, and it was well said; for when a man writes upon a particular subject he centres his mind in, he calls forth all its powers and energy to the discussion, and allows nothing that has not an immediate relation to the object he has in view to divide his feelings or distract his attention. But if the observations of Mr. Attorney-General are to be adopted as a rule, it will be impossible to discuss any point of a question without entering into the whole merits; no man will dare to complain of any abuse of the constitution, without, at the same time, enumerating all its excellences, or venture to touch upon a topic of grievance, without bringing forward a recital of blessings. A paragraph would be swelled to a pamphlet, and an essay expanded to a dissertation.

But it seems the circumstances of the times render any opinion in favour of a reform of Parliament peculiarly improper, and even dangerous, and that the recommendation of it, as the only remedy for our grievances must, therefore, in the present moment, be

ascribed to mischievous intentions. Were I impressed with a sense of that corruption which has, to a certain degree, impaired and defaced the fair fabric of our constitution, and which, if not stopped in its progress, may lead to its decay and ruin: were I to address you, gentlemen of the jury, to petition for a reform of Parliament, I would address you particularly now, as the season most fit for the purpose; I would address you now, because we have seen in other countries the effect of suffering evils to prevail so long in a government, and to increase to such a pitch, that it became impossible to correct them, without bringing on greater evils than those which it was the first object of the people to remove; that it became impossible to remedy abuses without opening a door to revolution and anarchy. There are many diseases which might be removed by gentle medicines in their beginning, and even corrected by timely regimen, which, when neglected, are sure to bring their victims to the grave. A slight wound, which may be certainly cured by the simplest application seasonably administered, if left to itself, will end in gangrene, mortification, and death. If experience can be of any service to warn men of their danger, and to instruct them how to avoid it, this is the season to teach men the best sort of wisdom, that wisdom which comes in time to be useful. I have myself no hesitation in subscribing to all the great points in this declaration of the meeting at Derby. To the abuses of our representative system they ascribe our unnecessary war, our heavy burdens, our many national calamities. And at what period have not the best and wisest men whom this country ever produced adopted the same sentiments and employed the same language? The illustrious Earl of Chatham has dignified the cause by the noblest specimens of eloquence. And who has not read the beautiful and energetic letter of Sir George Saville to his constituents on the same subject, a letter which is so much in point that I must beg leave to repeat it to you.

"I return to you baffled and dispirited, and I am sorry that truth obliges me to add, with hardly a ray of hope of seeing any change in the miserable course of public calamities.

"On this melancholy day of account, in rendering up to you my trust, I deliver to you your share of a country maimed and weakened; its treasure lavished and mispent; its honours faded; and its conduct the laughing-stock of Europe: our nation in a manner without allies or friends, except such as we have hired to destroy our fellow-subjects, and to ravage a country in which we once claimed an invaluable share. I return to you some of your principal privileges impeached and mangled. And, lastly, I leave you, as I conceive, at this hour and moment, fully, effectually, and absolutely, under the discretion and power of a military force, which is to act without waiting for the authority of the civil magistrates.

"Some have been accused of exaggerating the public misfortunes, nay, of having endeavoured to help forward the mischief, that they might afterwards raise discontents. I am willing to hope, that neither my temper nor my situation in life will be thought naturally to urge me to promote misery, discord, or confusion, or to exult in the subversion of order or in the ruin of property. I have no reason to contemplate with pleasure the poverty of our country, the increase of our debts and of our taxes, or the decay of our commerce. Trust not, however, to my report: reflect, compare, and judge for yourselves.

"But under all these disheartening circumstances, I could yet entertain a cheerful hope, and undertake again the commission with alacrity, as well as zeal, if I could see any effectual steps taken to remove the original cause of the mischief. Then would there be a hope.

"But till the purity of the constituent body, and thereby that of the representative, be restored, there is *NONE*.

"I gladly embrace this most public opportunity of delivering my sentiments, not only to all my constituents, but to those likewise not my constituents, whom yet, in the large sense, I represent, and am faithfully to serve.

"I look upon restoring election and representation in some degree (for I expect no miracles) to their original purity, to be that without which all other efforts will be vain and ridiculous.

"If something be not done, you may indeed retain the outward form of your constitution, but not the power thereof."

Such were the words of that great and good man, surely equally forcible with any of those employed in the declaration of the meeting at Derby, yet who ever imputed to him mischievous intentions, or suspected him of sedition? Yet this letter he published and circulated, not only among his constituents in the extensive county of York, but addressed it to the nation at large, and recommended it to their attention. Who does not recollect the conduct which had been adopted on the same subject by the persons now nearest His Majesty's person, and highest in his counsels? Had not the same truths published in this declaration been repeatedly asserted and enforced by them? Names it is unnecessary to mention; the proceedings to which I refer are sufficiently known: but at the same time, I beg leave to be understood to convey no personal reflection or reproach. I am the more anxious, in this instance, to guard against misrepresentation from what happened to me upon a late occasion, when, in consequence of my argument being misunderstood, an observation was put into my mouth, which would have disgraced the lips of an idiot. It was ascribed to me to have said, that if any man had written a libel, and could prove the publication of the same libel by another person before, he might justify himself under that previous publication. I cannot conceive

how so egregious a blunder could have been committed. What I said was, that a man may show he was misled by another in adopting his opinion, and may use that circumstance as evidence of the innocence of his intention in a publication ; or where the writing is not defamatory of an individual which may be brought to a known standard of positive law, but is only criminal from a supposed tendency in fact to excite sedition and disorder, he may repel that tendency by showing the jury, who alone are to judge of it, that the same writing had before been in extensive circulation, without either producing, or being supposed to produce, sedition ; and he may also repel the inference of criminal intention by showing that the wisest and most virtuous men in other times had maintained the same doctrines, not merely with impunity, but with the approbation and rewards of the public. This I maintained to be the law in the case of Mr. Holt, the printer, and this I shall continue to maintain upon every suitable occasion.

To bring home the application. The first men in the present Government have held and published every doctrine contained in this paper. I studiously avoid all allusion which may seem to convey reproach to the high persons to whom I have referred, on account of any change apparent in their conduct and sentiments, because I conceive it to be unnecessary to my present argument, and because I have a privilege to discuss their conduct in another place, where they are themselves present to answer. Besides, a man has a right to his sentiments, and he has a right to change them ;—on that score I attack no man, I only defend my clients. But thus far I am entitled to say, that if they published sentiments without having it imputed to them that they were seditious, evil-minded, and wicked, it is but fair and reasonable to allege, that others, in bringing forward the same sentiments, may be equally exempted from impure motives. I repeat that every man has a right to publish what he thinks upon matters of public concern, to point out the impolicy of wars, or the weight of taxes, to complain of grievances, and to expose abuses. It is a right which has ever been exercised, and which cannot be annihilated without at the same time putting an end to all freedom of discussion. If we talk of the circumstances of the times, do the present afford less ground for remonstrance and complaints than former periods ? I might read you many extracts from the writings of Mr. Burke, who, to eloquence, the fame of modern times, adds the most extensive and universal acquaintance with the history both of his own country and of every other. Mr. Burke (it is a merit I never can forget), with no less vehemence, and in language not less pointed and forcible than we find in this declaration, exposes the same abuses, and laments the same evils. What he wrote during the American war, are not the writers of this declaration justified in writing at present ? To the defects and abuses of our system of representa-

tion, may, in my opinion, be ascribed all the calamities that we then suffered, that we are now suffering, or are still apparently doomed to suffer. The evils which we now lament originated from the same source with those which we formerly suffered. To the defects of our representation we owe the present war, as to them also we owe that disastrous and unprincipled conflict which ended in the separation of Great Britain from her colonies. The events, indeed, were nearly connected : that mighty republic beyond the Atlantic gave birth to the new republic in Europe with which we are at present engaged in hostilities. From all the consequences, which we have already experienced, which we now suffer, and which we have yet to anticipate in reserve, I will venture to say that a reform in the representation, applied seasonably, would have effectually saved the country. Is it likely, while this fruitful source of misfortune remains, that we shall not continue to suffer ? And if a man really entertains this opinion, is it not his duty to publish his thoughts, and to urge the adoption of a fair and legal remedy ? Is he to be set down as a seditious and evil-minded man because he speaks the truth and loves his country ? Of the war in which this country is engaged I will here say nothing ; it will soon come to be discussed in another place, where I have not failed to exercise that privilege which I there possess, to deliver my opinion of its dreadful consequences. But of all these consequences, there is none which I conceive to be more dreadful and alarming than that I CAN SEE NO END TO IT ; and I believe wiser persons than myself are equally at a loss to predict its termination. This paper, which so justly reprobates wars, is rumoured to come from the pen of a writer whose productions justly entitle him to rank as the first poet of the age ;—who has enlarged the circle of the pleasures of taste, and embellished with new flowers the regions of fancy. It was brought forward in a meeting, in a legal and peaceable manner, and I have never heard that either the author, or any of the members present at the meeting, have been prosecuted, or that the smallest censure has fallen upon their conduct. But even if *they* had been made the objects of the prosecution, sanctioned as they are in what they have written by every principle of the constitution, and supported in their conduct by its best and most virtuous defenders in all times, I should have had little difficulty in defending them. How much less, in the case of the defendants, who are not stated to be the authors of this paper, who only published it in the course of their business, and who published it under such peculiar circumstances as, even if the contents could have admitted any criminal interpretation, must have done away on their part all imputation of any criminal intention. They have in a manly way instructed me, however, to meet the question upon its own merits ; not because they could not have proved a very peculiar alleviation, but because they have always presented a fair and unequivocal responsibility for

the conduct of their paper. Let me particularly call your attention to this circumstance, that for the number of years during which the defendants have conducted a newspaper, they have never before, in a single instance, been tried for any offence, either against an individual or against the State; they have, in the execution of their task, assiduously endeavoured to enlighten the minds of their fellow-subjects, while they have avoided everything that might tend to endanger their morals. They have displayed, in the conduct of their paper, a degree of learning, taste, and genius, superior to what has distinguished any similar undertaking. They have done their fellow-citizens a most essential service, by presenting them with the most full and correct intelligence of what has been passing on the political theatre of Europe; neither sullied by prejudice, nor disguised by misrepresentation. The attention which they have paid to the important occurrences which have taken place in a neighbouring country, and the impartiality with which they have stated them, do them the greatest credit. I trust that it will be no objection to them in their character of editors, that they have sought only for the truth, and, wherever they have found facts, have not hesitated to bring them before the public. They have thus enabled their readers to judge for themselves, and have furnished them with the means to form a proper judgment. This is the true value of a free press. The more men are enlightened, the better will they be qualified to be good subjects of a good Government: and the British constitution, as it has nothing to fear from comparison, so it can receive no support from those arts which disguise or suppress the truth respecting other nations. Wherever they have been called to deliver their sentiments upon public occurrences, they have equally avoided being misled by the credulity of alarm and the frenzy of innovation; and have reprobated, with the same spirit and boldness, the abuse of freedom and the perversion of power,—the outrages of a sanguinary mob, and the oppressions of an unprincipled despot. Whatever may have been their political partialities, they are such as cannot but do them the highest honour, and their partialities have been the result of honest conviction. Though uniformly consistent in their friendships, they have never been accused by those who know them of being partisans for interest. Their opinions have been honest, as well as steady; and through life they have maintained and asserted the pure principles of rational freedom, and given the most strenuous support to the best interests of man. They have, in their daily task, ever preserved reverence for private character, and in no instance violated the decorums of life by low ribaldry or wanton defamation. Though adverse in their sentiments to Ministers and their measures, they have confined themselves to manly discussion and fair argument, and never descended to indecent attack or scurrilous abuse.

My learned friend cannot produce a single instance in the course

of seventeen years (the term of my acquaintance with them), in which they have been charged in any court with public libel or with private defamation : and I challenge the world to exhibit a single instance in which they have made their journals the vehicles of slander, or where from interest, or malice, or any other base motive, they have published a single paragraph to disturb the happiness of private life, to wound the sensibility of innocence, or to outrage the decencies of well-regulated society. I defy the world to produce a single instance. Men who have so conducted themselves are entitled to protection from any Government, but certainly they are particularly entitled to it where a free press is part of the system. In the fair and liberal management of their paper, fifteen shillings out of every guinea which they receive flows directly into the public Exchequer ; and besides the incessant toil and the unwearied watching, all the expenses by which this great gain to Government is produced are borne exclusively by them. They essentially contribute, therefore, by their labours to the support of Government, and they are as honestly and fervently attached to the true principles of the British constitution, to the Crown, and to the mixed system of our Government, as any subject of His Majesty ; but at the same time they are ready to acknowledge that they ever have been advocates for a temperate and seasonable reform of the abuses which have crept into our system. Their minds are to be taken from the whole view of their conduct. It is a curious, and I will venture to say, in times so convulsed, an unexampled thing, that in all the productions of my friends, that in all the variety of their daily miscellany, the Crown officers have been able to pick out but one solitary advertisement from all that they have published, on which to bring a charge of sedition ; and of this advertisement, if they thought fit to go into the detail, they could show, even by internal evidence, that it was inserted at a very busy moment, without revision or correction, and at the very time that this advertisement appeared, seven hundred declarations, in support of the King's Government, appeared in the same paper, which they revised and corrected for publication. You are not therefore to take one advertisement, inserted in their paper, as a criterion of their principles, but to take likewise the other advertisements which appeared along with it. Would the readers, then, of this paper, while they read in this advertisement a recital of the abuses of the constitution, not be in possession of a sufficient antidote from the enumeration of its blessings ? While the admirers of the constitution came forward with an unqualified panegyric of its excellences, were not the friends of reform justified in coming forward with a fair statement of grievances ? If it is alleged that the pecuniary interest which the proprietors have in a newspaper ought to subject them to a severe responsibility for its contents, let it be recollected that they have only an interest in common with the public. I again call

upon Mr. Attorney-General to state whether the fact appears to him clearly established that the writers of this paper were influenced by seditious motives. I put it to you, gentlemen of the jury, as honest men, as candid judges of the conduct, as fair interpreters of the sentiments of others, whether you do not in your hearts and consciences believe that these men felt as they wrote—that they complained of grievances which they actually experienced, and expressed sentiments with the truth of which they were deeply impressed? If you grant this—if you give them the credit of honest feelings and upright intentions, on my part any farther defence is unnecessary; we are already in possession of your verdict; you have already pronounced them not guilty; for you will not condemn the conduct when you have acquitted the heart. You will rather desire that British justice should resemble that attribute of Heaven which looks not to the outward act, but the principle from which it proceeds—to the intention by which it is directed.

In summing up for the Crown, I would never wish to carry the principles of liberty farther than Mr. Attorney-General has done, when he asserted the right of political discussion, and desired you only to look to the temper and spirit with which such discussion was made,—when he asserted that it was right to expose abuses, to complain of grievances, provided always that it were done with an honest and fair intention. Upon this principle, I appeal to you whether this advertisement might not be written with a *bond fide* intention, and inserted among a thousand others, without any seditious purpose or desire to disturb the public peace?

Undoubtedly our first duty is the love of our country; but this love of our country does not consist in a servile attachment and blind adulation to authority. It was not so that our ancestors loved their country; because they loved it, they sought to discover the defects of its government: because they loved it, they endeavoured to apply the remedy. They regarded the constitution not as slaves with a constrained and involuntary homage, but they loved it with the generous and enlightened ardour of free men. Their attachment was founded upon a conviction of its excellence, and they secured its permanence by freeing it from blemish. Such was the love of our ancestors for the constitution, and their posterity surely do not become criminal by emulating their example. I appeal to you whether the abuses stated in this paper do not exist in the constitution, and whether their existence has not been admitted by all parties, both by the friends and enemies of reform? Both, I have no doubt, are honest in their opinions; and God forbid that honest opinion in either party should ever become a crime. In their opinion of the necessity of a reform, as the best and perhaps only remedy of the abuses of the constitution, the writers of this paper coincide with the most eminent and enlightened men. On this ground I leave the question, secure that your verdict will be

agreeable to the dictates of your consciences, and be directed by a sound and unbiassed judgment.

The jury then withdrew. It was two o'clock in the afternoon. The noble and learned Judge, understanding that they were divided, and likely to be some time in making up their minds, retired from the bench, and directed Mr. Lowten to take the verdict. At seven in the evening they gave notice that they had agreed on a special verdict, which Mr. Lowten could not receive. They went up in coaches, each attended by an officer, to Lord Kenyon's house. The special verdict was—*Guilty of publishing, but with no malicious intent.*

LORD KENYON. I cannot record this verdict ; it is no verdict at all.

The jury then withdrew, and, after sitting in discussion till within a few minutes of five in the morning, they found a general verdict of NOT GUILTY.

TRIAL of Mr. THOMAS WALKER of Manchester, Merchant, and six other Persons, indicted for a Conspiracy to overthrow the Constitution and Government of this Kingdom, and to aid and assist the French, being the King's enemies, in case they should invade this Kingdom. Tried at Lancaster, before Mr. Justice HEATH, one of the Judges of the Court of Common Pleas, and a Special Jury, on the 2d of April 1794.

THE SUBJECT.

WE have not found it necessary, for the full understanding of this interesting and extraordinary case, to print the evidence given upon the trial; because, to the honour of Lord Ellenborough, then Mr. Law, who conducted the prosecution for the Crown, after hearing positive contradiction of the only witness in support of it, by several unexceptionable persons, he expressed himself as follows:—

“I know the characters of several of the gentlemen who have been examined, particularly of Mr. Jones. I cannot expect one witness alone, unconfirmed, to stand against the testimony of all these witnesses: I ought not to desire it.” To which just declaration, which ended the trial, Mr. Justice Heath said, “You act very properly, Mr. Law.”

The jury found Mr. Walker Not Guilty; and the witness was immediately committed, indicted for perjury, and convicted at the same assizes.

Mr. Walker was an eminent merchant at Manchester, and a truly honest and respectable man; and nothing can show the fever of those times more than the alarming prosecution of such a person upon such evidence. It is not to every Attorney-General that such a case could have been safely trusted. The conduct of Mr. Law was highly to his honour, and a prognostic of his future character as a Judge.

THE SPEECH.

GENTLEMEN OF THE JURY,—I listened with the greatest attention (and in honour of my learned friend I must say with the greatest approbation) to much of his address to you in the opening of this cause;—it was candid and manly, and contained many truths

which I have no interest to deny ; one in particular which involves in it indeed the very principle of the defence,—the value of that happy constitution of Government which has so long existed in this island. I hope that none of us will ever forget the gratitude which we owe to the Divine Providence, and under its blessing, to the wisdom of our forefathers, for the happy establishment of law and justice under which we live, and under which, thank God, my clients are this day to be judged. Great, indeed, will be the condemnation of any man who does not feel and act as he ought to do upon this subject ; for surely if there be one privilege greater than another which the benevolent Author of our being has been pleased to dispense to His creatures since the existence of the earth which we inhabit, it is to have cast our lots in this age and country. For myself, I would in spirit prostrate myself daily and hourly before Heaven to acknowledge it, and instead of coming from the house of Mr. Walker, and accompanying him at Preston (the only truths which the witness has uttered since he came into Court), if I believed him capable of committing the crimes he is charged with, I would rather have gone into my grave than have been found as a friend under his roof.

Gentlemen, the crime imputed to the defendant is a serious one indeed. Mr. Law has told you, and told you truly, that this indictment has not at all for its object to condemn or to question the particular opinions which Mr. Walker and the other defendants may entertain concerning the principles of this Government, or the reforms which the wisest governments may from time to time require. He is indeed a man of too enlarged a mind to think for a moment that his country can be served by interrupting the current of liberal opinion, or overawing the legal freedom of English sentiment by the terrors of criminal prosecution. He openly disavows such a system, and has, I think, even more than hinted to us that there may be seasons when an attention to reform may be salutary, and that every individual under our happy establishment has a right, upon this important subject, to think for himself.

The defendants, therefore, are not arraigned before you, nor even censured in observation, for having associated at Manchester to promote what they felt to be the cause of religious and civil liberty ;—nor are they arraigned or censured for seeking to collect the sentiments of their neighbours and the public concerning the necessity of a reform in the constitution of Parliament. These sentiments and objects are wholly out of the question : but they are charged with having unlawfully confederated and conspired to destroy and overthrow the Government of the kingdom by OPEN FORCE AND REBELLION, and that to effect this wicked purpose they exercised the King's subjects with arms, perverting that which is our birthright, for the protection of our lives and property, to the malignant purpose of supporting the enemies of this kingdom in

case of an invasion : in order, as my friend has truly said (for I admit the consequence if the fact be established), in order to make our country that scene of confusion and desolation which fills every man's heart with dismay and horror when he only reads or thinks of what is transacting at a distance upon the bloody theatre of the war that is now desolating the world. This, and nothing different or less than this, is the charge which is made upon the defendants, at the head of whom stands before you a merchant of honour, property, character, and respect, who has long enjoyed the countenance and friendship of many of the worthiest and most illustrious persons in the kingdom, and whose principles and conduct have more than once been publicly and gratefully acknowledged by the community of which he is a member, as the friend of their commerce and liberties, and the protector of the most essential privileges which Englishmen can enjoy under the laws.

Gentlemen, such a prosecution against such a person ought to have had a strong foundation. Putting private justice and all respect of persons wholly out of the question, it should not, but upon the most clear conviction and the most urgent necessity, have been instituted at all. We are at this moment in a most awful and fearful crisis of affairs. We are told authentically by the Sovereign from the throne that our enemies in France are meditating an invasion, and the kingdom from one end to another is in motion to repel it. In such a state of things, and when the public transactions of government and justice in the two countries pass and repass from one another as if upon the wings of the wind, is it politic to prepare this solemn array of justice upon such a dangerous subject, without a reasonable foundation, or rather without an urgent call ? At a time when it is our common interest that France should believe us to be, what we are and ever have been, one heart and soul to protect our country and our constitution,—is it wise or prudent, putting private justice wholly out of the question, that it should appear to the councils of France—apt enough to exaggerate advantages—that the Judge representing the Government in the northern district of this kingdom should be sitting here in judgment, in the presence of all the gentlemen whose property lies in this great county, to trace and to punish the existence of a rebellious conspiracy to support an invasion from France,—a conspiracy not existing in a single district alone, but maintaining itself by criminal concert and correspondence in every district, town, and city in the kingdom,—projecting nothing less than the utter destruction and subversion of the Government ? Good God ! can it be for the interest of Government that such an account of the state of this country should go forth ? Unfortunately, the rumour and effect of this day's business will spread where the evidence may not travel with it to serve as an antidote to the mischief ; for certainly the scene which we have this day witnessed can never be imagined in France or in Europe,

where the spirit of our law is known and understood ;—it never will be credited that all this serious process has no foundation either in fact or probability, and that it stands upon the single evidence of a common soldier, or rather a common vagabond, discharged as unfit to be a soldier ;—of a wretch, lost to all reverence for God and religion, who avows that he has none for either, and who is incapable of observing even common decency as a witness in the court. This will never be believed ; and the country, whose best strength at home and abroad is the soundness of all its members, will suffer from the very credit which Government will receive for the justice of this proceeding.

What, then, can be more beneficial than that *you* should make haste, as public and private men, to undeceive the world, to do justice to your fellow-subjects, and to vindicate your country ? What can be more beneficial than that you, as honest men, should upon your oaths pronounce and record by your verdict that, however Englishmen may differ in religious opinions, which in such a land of thinking ever must be the case ;—that, however they may separate in political speculations as to the wisest and best formation of a House of Commons ;—that though some may think highly of the Church and its establishment, whilst others, but with equal sincerity, prefer the worship of God with other ceremonies, or without any ceremonies ;—that though some may think it unsafe to touch the constitution at this particular moment, and some, that at no time it is safe to touch it, while others think that its very existence depends upon immediate reformation ;—what, I repeat, can be more beneficial than that your verdict should establish that though the country is thus divided upon these political subjects, as it ever has been in every age and period of our history, yet that we all recollect our duty to the land which our fathers have left us as an inheritance—that we all know and feel we have one common duty and one common interest ? This will be the language of your verdict, whatever you yourselves may think upon these topics connected with but still collateral to the cause :—whether you shall approve or disapprove of the opinions or objects of the defendants, I know that you will still with one mind revolt with indignation at the evidence you have heard, when you shall have heard also the observations I have to make upon it, and, what is far more important, the facts I shall bring forward to encounter it. To these last words I beg your particular attention. I say, when you shall hear *the facts with which I mean to encounter the evidence*. My learned friend has supposed that I had nothing wherewith to support the cause but by railing at his witness, and endeavouring to traduce his character by calling others to reproach it. He has told you that I could encounter his testimony by *no one fact*, but that he had only to apprehend the influence which my address might have upon you ;—as if I, an utter stranger here, could have any

possible weight or influence to oppose to him, who has been so long known and honoured in this place.

But although my learned friend seems to have expected no adverse evidence, he appears to have been apprehensive for the credit and consistency of his own ; since he has told you that we have drawn this man into a lure not uncommon for the purpose of entrapping witnesses into a contradiction of testimony ;—that we have ensnared him into the company of persons who have drawn him in by insidious questions, and written down what he has been made to declare to them, in destruction of his original evidence, for the wicked purpose of attacking the sworn testimony of truth, and cutting down the consequences which would have followed from it to the defendants. If such a scene of wickedness had been practised, it must have been known to the witness himself ; yet my learned friend will recollect, that though he made this charge in his hearing before his examination, he positively denied the whole of it. I put it to him point by point, pursuing the opening as my guide, —and he denied that he had been drawn into any lure ;—he denied that any trap had been laid for him ;—he denied that he had been asked any questions by anybody. If I am mistaken, I desire to be corrected, and particularly so by my learned friend, because I wish to state the evidence as it was given. He has, then, denied all these things ; he has further sworn that he never acknowledged to Mr. Walker that he had wronged or injured him, or that the evidence he had given against him was false ;—that he never had gone down upon his knees in his presence to implore his forgiveness ;—that he never held his hands before his face, to hide the tears that were flowing down his cheeks in the moment of contrition or of terror at the consequence of his crimes : all this he has positively and repeatedly sworn in answer to questions deliberately put to him : and instead of answering with doubt, or as trying to recollect whether anything approaching such a representation had happened, he put his hands to his sides, and laughed, as you saw, at me who put the questions, with that sneer of contempt and insolence which accompanied the whole of his evidence, on my part at least of his examination. If nothing, therefore, was at stake but the destruction of this man's evidence, and with it the prosecution which rests for its whole existence upon it, I should proceed at once to confound him with testimony, the truth of which my learned friend himself will, I am sure, not bring into question. But as I wish the whole conduct of my clients to stand fairly before you, and not to rest merely upon positive swearing destructive of opposite testimony, and as I wish the evidence I mean to bring before you, and the falsehood of that which it opposes, to be clearly understood, I will state to you how it has happened that this strange prosecution has come before you.

The town of Manchester has been long extremely divided in

religious and civil opinions; and while I wish to vindicate those whom I represent in this place, I desire not to inflame differences which I hope in a short season will be forgotten. I am desirous, on the contrary, that everything which proceeds from me may be the means of conciliating rather than exasperating dissensions which have already produced much mischief, and which, perhaps, but for the lesson of to-day, might have produced much more.

Gentlemen, you all know that there have been for centuries past in this country various sects of Christians worshipping God in different forms, and holding a diversity of religious opinions; and that the law has for a long season deprived numerous classes, even of his Majesty's Protestant subjects, of privileges which it confers upon the rest of the public, setting as it were a mark upon them, and keeping them below the level of the community by shutting them out from offices of trust and confidence in the country. Whether these laws be wise or unwise, whether they ought to be continued or abolished, are questions for the Legislature, and not for us; but thus much I am warranted in saying, that it is the undoubted privilege of every man, or class of men, in England, to petition Parliament for the removal of any system or law which either actually does aggrieve, or which is thought to be a grievance. Impressed with the sense of this inherent privilege, this very constitutional society, which is supposed by my learned friend the Attorney-General to have started up on the breaking out of the war with France for the purpose of destroying the constitution,—this very society owed its birth to the assertion of this indisputable birthright of Englishmen, which the authors of this prosecution most rashly thought proper to stigmatise and resist. It is well known that in 1790 the Dissenters in the different parts of the kingdom were solicitous to bring before Parliament their application to put an end for ever to all divisions upon religious subjects, and to make us all, what I look forward yet to see, one harmonious body, living like one family together. It is also well remembered with what zeal and eloquence that great question was managed in the House of Commons by Mr. Fox, and the large majority with which the repeal of the Test Acts was rejected. It seems, therefore, strange that the period of this rejection should be considered as an era either of danger to the Church or of religious triumph to Christians. Nevertheless, a large body of gentlemen and others at Manchester, whose motives I am far from wishing to scrutinise or condemn, considered this very wish of the Dissenters as injurious to their rights, and as dangerous to the Church and State. They published advertisements expressive of these sentiments; and the rejection of the bill in the Commons produced a society styled the Church-and-King Club, which met for the first time to celebrate what they called the glorious decision of the House of Commons in rejecting the prayer of their dissenting brethren.

Gentlemen, it is not for me to say that it was unjust or impolitic in Parliament to reject the application ; but surely I may, without offence, suggest that it was hardly a fit subject of triumph that a great number of fellow-subjects,—amounting, I believe, to more than a million in this country,—had miscarried in an object which they thought beneficial, and which they had a most unquestionable right to submit to the Government under which they lived. Yet for this cause alone—France and every other topic of controversy being yet unborn—the Church and King were held forth to be in danger ; a society was instituted for their protection, and an uniform appointed with the Church of Manchester upon the button.

Gentlemen, without calling for any censure upon this proceeding, but leaving it to every man's own reflection, is it to be wondered at or condemned that those who thought more largely and liberally on subjects of freedom, both civil and religious, but who found themselves persecuted for sentiments and conduct the most avowedly legal and constitutional, should associate for the support of their rights and privileges as Englishmen, and assemble to consider how they might best obtain a more adequate representation of the people of Great Britain in Parliament ?

Gentlemen, this society continued with these objects in view until the issuing of the proclamation against republicans and levelers, calling upon the magistrates to exert themselves throughout the kingdom to avert some danger with which, it seems, our rulers thought this kingdom was likely to be visited. Of this danger, or the probability of it, either *generally*, or at Manchester *in particular*, my learned friend has given no evidence from any quarter but that of Mr. Dunn ;—he has not proved that there has been in any one part of the kingdom anything which could lead Government to apprehend that meetings existed for the purposes pointed at. But that is out of the question. Government had a right to think for itself, and to issue the proclamation. The publicans, however (as it appears upon the cross-examination of the witness), probably directed by the magistrates, thought fit to shut up their houses, opened by immemorial law, to all the King's subjects, and to refuse admission to all the gentlemen and tradesmen of the town who did not associate under the banners of this Church-and-King Club. This illegal proceeding was accompanied with an advertisement containing a vehement libel against all those persons who, under the protection of the laws, thought themselves as much at liberty to consider their various privileges as others were to maintain the establishment of the Church. Upon this occasion Mr. Walker honourably stood forth, and opened his house to this constitutional society at a time when they must otherwise have been in the streets by a combination of the publicans to reject them. Now, gentlemen, I put it to you as men of honour, whether it can be

justly attributed to Mr. Walker as seditious that he opened his house to a society of gentlemen and tradesmen,—whose good principles he was acquainted with,—who had been wantonly opposed by this Church-and-King Club, whose privileges they had never invaded or questioned, and against whom, in this day of trial, there is no man to be found who can come forward to impeach anything they have done or a syllable they have uttered? Vehement as the desire most apparently has been to bring this gentleman and his associates, as they are called, to justice, yet not one magistrate, no man of property or figure in this town or its neighbourhood, no person having the King's authority in the county, has appeared to prove one fact or circumstance from whence even the vaguest suspicion could arise that anything criminal had been intended or transacted: no constable who had ever been sent to guard lest the peace might be broken, or to make inquiries for its preservation; not a paper seized throughout England, nor any other prosecution instituted except upon the unsupported evidence of the same miserable wretch who stands before you; the town, neighbourhood, and county remaining in the same profound state of tranquillity as it is at the moment I am addressing you.

Gentlemen, when Parliament assembled at the end of 1792, previous to the commencement of the war, these unhappy differences were suddenly (and, as you will see, from no fault of Mr. Walker's) brought to the crisis which produced this trial. A meeting was held in Manchester to prepare an address of thanks to the King for having embodied the militia during the recess of Parliament, and for having put the kingdom into a posture of defence. I do not seek to question the measure of Government which gave rise to this approbation, or the approbation itself, which the approvers had a right to bestow; but others had an equal right to entertain other opinions. On all public measures the decision undoubtedly is with Government; but the people at the same time have a right to think upon them, and to express what they think. Surely war, of all other subjects, is one which the people have a right to consider? Surely it can be no offence for those whose properties were to be taxed, and whose inheritances were to be lessened by it, to pause a little upon the eve of a contest the end of which no man can foresee, the expenses of which no man can calculate, or estimate the blood to flow from its calamities? Surely it is a liberty secured to us by the first principles of our constitution, to address the Sovereign, or instruct our representatives, to avert the greatest evil that can impend over a nation.

Gentlemen, one of those societies, called the Reformation Society, met to exercise this undoubted privilege, and, in my mind, upon the fittest occasion that ever presented itself. Yet mark the moderation of Mr. Walker, whose violence is arraigned before you. Though he was no member of that body, and though he agreed in the pro-

priety of the measure in agitation, yet he suggested to them that their opposition might be made a pretence for tumult ; that tranquillity in such a crisis was by every means to be promoted ; and therefore advised them to abstain from the meeting ; so that the other meeting was left to carry its approbation of Government and of the war without a dissenting voice. If ever, therefore, there was a time when the Church and King might be said to be out of danger at Manchester, it was at this moment ; yet, *on this very day*, they hoisted the banners of alarm to both ; they paraded with them through every quarter of the town ; mobs, by degrees, were collected, and in the evening of this very 11th of December the houses of Mr. Walker and others were attacked. You will observe that, *before this day*, no man has talked about arms at Mr. Walker's. If an honourable gentleman, upon the jury, who has been carefully taking notes of the evidence, will have the goodness to refer to them, he will find that it was not till near a week after this (so Dunn expresses it) that a single firelock had been seen ; nor, indeed, does any part of the evidence go back beyond this time, when Mr. Walker's house was thus surrounded and attacked by a riotous and disorderly mob. He was aware of the probable consequences of such an attack ; he knew, by the recent example of Birmingham, what he and others professing sentiments of freedom had to expect ; he therefore got together a few firearms which he had long had publicly by him, and an inventory of which, with the rest of his furniture at Barlow Hall, had been taken by a sworn appraiser long before anything connected with this indictment had an existence ; and with these, and the assistance of a few steady friends, he stood upon his defence. He was advised, indeed, to retire for safety ; but knowing his own innocence, and recollecting the duty he owed to himself, his family, and the public, he declared he would remain there to support the laws, and to defend his property ; and that he would perish rather than surrender those privileges which every member of the community is bound, both from interest and duty, to maintain. To alarm the multitude, he fired from the windows over their heads, and dispersed them ; but when, the next morning, they assembled in very great numbers before his house, and when a man got upon the churchyard wall, and read a most violent and inflammatory paper, inciting the populace to pull the house down, Mr. Walker went out amongst them, and expostulated with them, and asked why they had disgraced themselves so much by attacking him the night before, adding that if he had done any of them, or any person whom they knew, any injury, he was, upon proof of it, ready to make them every satisfaction in his power. He also told them that he had fired upon them the night before because they were mad, as well as drunk ; that if they attacked him again, he would, under the same circumstances, act as he had done before ; but that he was then alone and unarmed in the midst of

them, and if he had done anything wrong, they were then sober, and had him completely in their power.

Gentlemen, this was most meritorious conduct. You all live at a distance from the metropolis, and were probably, therefore, fortunate enough neither to be within or near it in 1780, when, from beginnings smaller than those which exhibited themselves at Birmingham, or even at Manchester, the metropolis of the country, and with it the country itself, had nearly been undone. The beginning of these things is the season for exertion. I shall never indeed forget what I have heard the late mild and venerable magistrate, Lord Mansfield, say upon this subject, whose house was one of the first attacked in London. I have more than once heard him say that perhaps some blame might have attached upon himself and others in authority for their forbearance in not having directed force to have been *at the first moment* repelled by force, it being the highest humanity to check the infancy of tumults.

Gentlemen, Mr. Walker's conduct had the desired effect; he watched again on the 13th of December, but the mob returned no more, and the next morning the arms were locked up in a bed-chamber in his house, where they have remained ever since, and where, of course, they never could have been seen by the witness, whose whole evidence commences above a week subsequent to the 11th of December, when they were finally put aside. This is the genuine history of the business; and it must therefore not a little surprise you that when the charge is wholly confined to the use of arms, Mr. Law should not even have hinted to you that Mr. Walker's house had been attacked, and that he was driven to stand upon his defence, as if such a thing had never had an existence; indeed, the armoury, which must have been exhibited in such a statement, would have but ill suited the indictment or the evidence, and I must therefore undertake the description of it myself.

The arms having been locked up, as I told you, in the bed-chamber, I was shown last week into this house of conspiracy, treason, and death, and saw exposed to view the mighty armoury which was to level the beautiful fabric of our constitution, and to destroy the lives and properties of ten millions of people. It consisted, first, of six little swivels, purchased two years ago at the sale of Livesey, Hargrave, & Co. (of whom we have all heard so much), by Mr. Jackson, a gentleman of Manchester, who is also one of the defendants, and who gave them to Master Walker, a boy about ten years of age. Swivels, you know, are guns so called because they turn upon a pivot; but these were taken off their props, were painted, and put upon blocks resembling carriages of heavy cannon, and in that shape may be fairly called children's toys; you frequently see them in the neighbourhood of London adorning the houses of sober citizens, who, strangers to Mr. Brown and his improvements, and preferring grandeur to taste, place them

upon their ramparts at Mile-End or Islington. Having, like Mr. Dunn (I hope I resemble him in nothing else)—having, like him, served His Majesty as a soldier (and I am ready to serve again if my country's safety should require it), I took a closer review of all I saw, and observing that the muzzle of one of them was broke off, I was curious to know how far this famous conspiracy had proceeded, and whether they had come into action, when I found the accident had happened on firing a *feu-de-joie* upon His Majesty's happy recovery, and that they had been afterwards fired upon the Prince of Wales' birthday. These are the only times that, in the hands of these conspirators, these cannon, big with destruction, had opened their little mouths—once to commemorate the indulgent and benign favour of Providence in the recovery of the Sovereign, and once as a congratulation to the heir-apparent of his crown on the anniversary of his birth.

I went next, under the protection of the master-general of this ordnance (Mr. Walker's chambermaid), to visit the roost of this formidable array of death, and found a little musketoon, about so high [*describing it*]; I put my thumb upon it, when out started a little bayonet like the Jack-in-a-box which we buy for children at a fair. In short, not to weary you, gentlemen, there was just such a parcel of arms of different sorts and sizes as a man collecting amongst his friends, for his defence against the sudden violence of a riotous multitude, might be expected to have collected. Here lay three or four rusty guns of different dimensions, and here and there a bayonet or broadsword covered over with dust and rust, so as to be almost undistinguishable; for, notwithstanding what this infamous wretch has sworn, we will prove by witness after witness, till you desire us to finish, that they were principally collected on the 11th of December, the day of the riot; and that from the 12th in the evening, or the 13th in the morning, they have lain untouched as I have described them; that their use began and ended with the necessity: and that, from that time to the present, there never has been a firearm in the warehouse of any sort or description. This is the whole on which has been built a proceeding that might have brought the defendants to the punishment of death, for both the charge and the evidence amount to high treason—high treason, indeed, under almost every branch of the statute, since the facts amount to levying war against the King, by a conspiracy to wrest by force the government out of his hands, to an adherence to the King's enemies, and to a compassing of his death, which is a necessary consequence of an invading army of republicans, or of any other enemies of the State; yet, notwithstanding the notoriety of these facts, the unnamed prosecutors (and, indeed, I am afraid to slander any man, or body of men, by even a guess upon the subject) have been beating up, as for volunteers, to procure another witness to destroy the lives of the gentlemen before you, against many of

whom warrants for high treason were issued to apprehend them. Mr. Walker, among the rest, was the subject of such a warrant; and as soon as he knew it, he behaved (as he has throughout) like a man and an Englishman. He wrote immediately to the Secretary of State, who was summoned here to-day, and whose absence I do not complain of, because we have, by consent, the benefit of his testimony. He wrote three letters to Mr. Dundas, one of which was delivered by Mr. Warton, informing him that he was in London on his business as a merchant; that if any warrant had been issued against him, he was ready to meet it, and for that purpose delivered his address where it might be executed. This Mr. Walker did when the prosecutors were in search of another witness, and when this Mr. Dunn was walking like a tame sparrow through the New Bailey, fed at the public or some other expense, and suffered to go at large, though arrested upon a criminal charge, and sent into custody under it.

And to what other circumstances need I appeal for the purity of the defendants than that, under the charge of a conspiracy, extensive enough to comprehend in its transactions (if any existed) the whole compass of England, the tour of which was to have been made by Mr. Yorke, there has not been one man found to utter a syllable about them,—no, not one man, thanks be to God, who has so framed the characteristics of Englishmen,—except the solitary infamous witness before you, who, from what I heard since I began to address you, may have spoken the truth when he claimed my acquaintance, as I have reason to think he has seen me before in a criminal court of justice.

Having now, for the satisfaction of the defendants, rather than from the necessity of the case, given you an account of their whole proceedings as I shall establish them by proof, let us examine the evidence that has been given against them, and see how the truth of it could stand with reason or probability, supposing it to have been sworn to by a witness the most respectable.

According to Dunn's own account, Mr. Walker had not been at the first meeting, so that when he first saw Dunn he did not know either his person or his name; he might have been a spy (God knows there are enow of them), and at that season in particular informers were to be expected. Mr. Walker is supposed to have said to him, "What is your business here?" to which he answered, "I am going to the society," which entitled him at once to admission without further ceremony; there was nobody to stop him. Was he asked his name?—was he balloted for?—was he questioned as to his principles? No, he walked in at once; but first, it seems, Mr. Walker, who had never before seen him, inquired of him the news from Ireland (observing by his voice that he was an Irishman), and asked what the volunteers were about, as if Mr Walker could possibly suppose that such a person was likely to

have been in a correspondence with Ireland which told him more than report must have told everybody else. Mr. Dunn tells you indeed he was no such person ; he was a friend, as he says, to the King and constitution, which Mr. Walker would have found by asking another question ; but, without further inquiry, he is supposed to have said to him at once, " We shall overthrow the constitution by and by ; " which the moment Dunn had heard, up walked that affectionate subject of our Sovereign Lord the King into Mr. Walker's house, where the constitution was to be so overthrown. But then he tells you he thought there was no harm to be done, that it was only for the benefit of the poor and the public good. But how could he think so after what he had that moment heard ? But he did not know, it seems, what Mr. Walker meant. Gentlemen, do you collect, from Mr. Dunn's discourse and deportment to-day, that he could not tell but that a man meant good when he had heard even him express a *wish* to overthrow the Government ? Would you pull a feather out of a sparrow's wing upon the oath of a man who swears that he believed a person to have been a good subject in the very moment he was telling him of an intended rebellion ? But why should I fight a phantom with argument ? Could any man but a driveller have possibly given such an answer as is put into Mr. Walker's mouth to a man he had never seen in his life ? However many may differ from Mr. Walker in opinion, everybody, I believe, will admit that he is an acute, intelligent man, with an extensive knowledge of the world, and not at all likely to have conducted himself like an idiot. What follows next ? Another night he went into the warehouse, where he saw Mr. Yorke called to the chair, who said he was going the tour of the kingdom, in order to try the strength of the different societies, to join fifty thousand men that were expected to land from France in this country ; and that Mr. Walker then said, " Damn all kings—I know our King has seventeen millions of money in the Bank of Vienna, although he won't afford any of it to the poor." Gentlemen, is this the language of a man of sense and education ? If Mr. Walker had the malignity of a demon, would he think of giving effect to it by such a senseless lie ? When we know that, from the immense expense attending His Majesty's numerous and illustrious family, and the great necessities of the state, he has been obliged over and over again to have recourse to the generosity and justice of Parliament to maintain the dignity of the Crown, could Mr. Walker ever have thought of inventing this nonsense about the Bank of Vienna, when there is a bank too in our own country where he might legally invest his property for himself and his heirs ? But Mr. Walker did not stop there ; he went on and said, " I should think no more of taking off the King's head than I should of tearing this piece of paper." All this happened soon after his admission ; yet this man, who represents himself to you

upon his oath this day as having been uniformly a friend to the constitution as far as he understood it,—as having left the society as soon as he saw their mischievous inclinations, and as having *voluntarily* informed against them,—I say this same friend of the constitution tells you, almost in the same breath, that he continued to attend their meeting from thirty to forty times, *where high treason was committing with open doors*; and that, instead of giving information of his own free choice, he was arrested in the very act of distributing some seditious publication.

Gentlemen, it is really a serious consideration that upon such testimony a man should even be put upon his defence in the courts of this country. Upon such principles what man is safe? I was indeed but ill at ease myself when Mr. Dunn told me he knew me better than I supposed. What security have I at this moment that he should not swear that he had met me under some gateway in Lancaster, and that I had said to him, “Well, Dunn, I hope you will not swear against Mr. Walker, but that you will stick to the good cause: damn all kings: damn the constitution.” If the witness were now to swear this, into gaol I must go; and if my client is in danger from what has been sworn against *him*, what safety would there be for *me*?—The evidence would be equally positive, and I am equally an object of suspicion as Mr. Walker. It is said of *him* that he has been a member of a society for the reform of Parliament; so have *I*, and so am *I* at this moment, and so at all hazards I will continue to be: and I will tell you why, gentlemen, because I hold it to be essential to the preservation of all the ranks and orders of the state,—alike essential to the prince and to the people. I have the honour to be allied to His Majesty in blood, and my family has been for centuries a part of what is now called the aristocracy of the country; I can therefore have no interest in the destruction of the constitution.

In pursuing the probability of this story (since it must be pursued), let us next advert to whether anything appears to have been done in other places which might have been exposed by this man's information. The whole kingdom is under the eye and dominion of magistracy, awakened at that time to an extraordinary vigilance; yet has any one man been arrested even upon the suspicion of any correspondence with the societies of Manchester, good, bad, or indifferent? or has any person within the four seas come to swear that any such correspondence existed? So that you are desired to believe, upon Mr. Dunn's single declaration, that gentlemen of the description I am representing, without any end or object, or concert with others, were resolved to put their lives into the hands of any miscreant who might be disposed to swear them away, by holding public meetings of conspiracy with open doors, and in the presence of all mankind, liable to be handed over to justice every moment of their lives, since every tap at the door might have in-

roduced a constable as readily as a member ; and, to finish the absurdity, these gentlemen are made to discourse in a manner that would disgrace the lowest and most uninformed classes of the community.

Let us next see what interest Mr. Walker has in the proposed invasion of this peaceable country. Has Mr. Law proved that Mr. Walker had any reason to expect protection from the French, from any secret correspondence or communication, more than you or I have, or that he had prepared any means of resisting the troops of this country ? How was he to have welcomed these strangers into our land ? What ! with this dozen of rusty muskets, or with those conspirators whom he exercised ? But who are they ? They are, it seems, " to the jurors unknown," as my learned friend has called them, who drew this indictment, and he might have added, *who will ever remain unknown to them*. But has Mr. Walker nothing to lose, like other men who dread an invasion ? He has long had the acquaintance and friendship of some of the best men in this kingdom who would be destroyed if such an invasion should take place. Has he, like other men, no ties of a nearer description ? Alas ! gentlemen, I feel at this moment that he has many. Mr. Dunn told you that I was with Mr. Walker at Manchester ; and it enables me to say, of my own knowledge, that it is impossible he could have had the designs imputed to him. I have been under his roof, where I have seen him the husband of an amiable and affectionate woman, and the happy parent of six engaging children ; and it hurts me not a little to think what they must feel at this moment. Before prosecutions are set on foot, those things ought to be considered ; we ought not like the fool in the Proverbs, to scatter firebrands and death, and say, " Am I not in sport ? " Could we look at this moment into the dwelling of this unfortunate gentleman, for so I must call him, I am persuaded the scene would distress us ; his family cannot but be unhappy ; they have seen prosecutions, equally unjust as even this is, attended with a success of equal injustice ; and we have seen those proceedings, I am afraid by those who are at the bottom of this indictment, put forward for your imitation. I saw to my astonishment, at Preston, where, as a traveller, I called for a newspaper, that this immaculate society (the Manchester Church-and-King Club) had a meeting lately, and had published to the world the toasts and sentiments which they drank ; some of them I like, some of them deserve reprobation ; " The Church and King ; " very well. " The Queen and Royal Family ; " be it so. " The Duke of York and the Army ; " be it so. But what do you think came next ?

[Here Mr. Justice Heath interrupted Mr. Erskine by saying, " We are not to go into this, of which you cannot give evidence. "]

MR. ERSKINE. I don't know what effect these publications may have upon the administration of justice. Why drink "*The Lord*

Advocate and the Court of Justiciary in Scotland," just when your Lordship is called upon to administer justice according to the laws of *England*? If I had seen the King and his judges upon the Northern Circuit published as a toast——

MR. JUSTICE HEATH. You know you cannot give this in evidence.

MR. ERSKINE. Gentlemen, considering the situation in which my client stands at this moment, I expressed the idea which occurred to me, and which I thought it right not to suppress ; but let it pass—this is not the moment for controversy. It is my interest to submit to any course his Lordship may think proper to dictate ; the evidence is more than enough for my purpose—so mainly improbable, so contrary to everything in the course of human affairs, that I know you will reject it, even if it stood unanswered. What then will you say, when I shall prove to you, by the oath of the various persons who attended these societies, that no proposition of the sort insinuated by this witness ever existed—that no hint, directly or indirectly, of any illegal tendency, was ever whispered—that their real objects were just what were *openly professed*, be they right or wrong, be they wise or mistaken, namely, *reformation in the constitution of the House of Commons*, which my learned friend admitted they had a right by constitutional means to promote. This was their object. They neither desired to touch the King's authority, nor the existence or privileges of the House of Lords ; but they wished that those numerous classes of the community who (by the law as it now stands) are excluded from any share in the choice of members to the Parliament, should have an equal right with others in concerns where their interests are equal. Gentlemen, this very county furnishes a familiar instance. There are, I believe, at least thirty thousand freeholders in Lancashire, each of whom has a vote for two members of Parliament ; and there are two boroughs within it (if I mistake not), Clithero and Newton, containing a handful of men who are at the beck of *two individuals*, yet these two little places send for themselves, *or rather for these two persons*, two members each, which makes four against the whole power and interest of this county in Parliament, touching any measure, how deeply soever it may concern their prosperity. Can there be any offence in meeting together to consider of a representation to Parliament suggesting the wisdom of alteration and amendment in such a system ?

MR. JUSTICE HEATH. *There can be no doubt but that a petition to Parliament, for reform or anything else, can be no offence.*

MR. ERSKINE. Gentlemen, I expected this interruption from the learning of the Judge ; certainly it can be no offence, and consequently my clients can be no offenders.

Having now exposed the weakness of Dunn's evidence from its own intrinsic defects, and from the positive contradiction every part

of it is to receive from many witnesses, I shall conclude with the still more positive and unequivocal contradiction which the whole of it has received from Dunn himself. You remember that I repeatedly asked him whether he had not confessed that the whole he had sworn to-day was utterly false, whether he had not confessed it to be so with tears of contrition, and whether he had not kneeled down before Mr. Walker to implore his forgiveness? My learned friend, knowing that this would be proved upon him, made a shrewd and artful observation to avoid the effects of it. He said that such things had fallen often under the observation of the Court upon the circuit, where witnesses had been drawn into similar snares by artful people to invalidate their testimony. This may be true, but the answer to its application is, that not only the witness himself has positively denied that any such snare was laid for him, but the witnesses I have to call, both in respect of number and credit, will put a total end to such a suggestion. If I had indeed but one witness, my friend the Attorney-General might undoubtedly put it to you in reply whether his or mine was to be believed; but I will call to you *not one* but *four or five*, or, if necessary, *six witnesses*, ABOVE ALL SUSPICION, in whose presence Dunn voluntarily confessed the falsehood of his testimony, and, with tears of apparent repentance, offered to make any reparation to these injured and unfortunate defendants. This I pledge myself to prove to your satisfaction.

Gentlemen, the object of all public trial and punishment is the security of mankind in social life. We are not assembled here for the purposes of vengeance, but for the ends of justice—to give tranquillity to human life, which is the scope of all government and law. You will take care, therefore, how, in the very administration of justice, you disappoint that which is the very foundation of its institution—you will take care that, in the very moment you are trying a man as a disturber of the public happiness, you do not violate the rules which secure it.

The last evidence I have been stating ought by itself to put an instant end to this cause. I remember a case very lately which was so brought to its conclusion, where, upon a trial for perjury of a witness who had sworn against a captain of a vessel in the African trade, it appeared that the witnesses who swore to the perjury against the defendants had themselves made deliberate declarations which materially clashed with the testimony they were giving. Lord Kenyon, who tried the cause, would after this proceed no further, and asked me, who was counsel for the prosecution, whether I would urge it further, saying emphatically, what I hope every judge under similar circumstances will think it his duty to say also, "No man ought or can be convicted in England unless the judge and the jury have a *firm assurance* that innocence cannot by any possibility be the victim of conviction and sentence."

And how can the jury or his Lordship have that assurance here, when the only source of it is brought into such serious doubt and question? Upon the whole, then, I cannot help hoping that my friend the Attorney-General, when he shall hear my proofs, will feel that a prosecution like this ought not to be offered for the seal and sanction of your verdict. Unjust prosecutions lead to the ruin of all governments. Whoever will look back to the history of the world in general, and of our own particular country, will be convinced that exactly as prosecutions have been cruel and oppressive, and maintained by inadequate and unrighteous evidence, in the same proportion, and by the same means, their authors have been destroyed instead of being supported by them; as often as the principles of our ancient laws have been departed from in weak and wicked times, so often the governments that have violated them have been suddenly crumbled into dust; and therefore, wishing, as I sincerely do, the preservation and prosperity of our happy constitution, I desire to enter my protest against its being supported by means that are likely to destroy it. Violent proceedings bring on the bitterness of retaliation, until all justice and moderation are trampled down and subverted. Witness those sanguinary prosecutions previous to the awful period in the last century when Charles the First fell. That unfortunate prince lived to lament those vindictive judgments by which his impolitic, infatuated followers imagined they were supporting his throne—he lived to see how they destroyed it; his throne, undermined by violence, sunk under him, and those who shook it were guilty in their turn (such is the natural order of injustice) not only of similar but of worse and more violent wrongs; witness the fate of the unhappy Earl of Strafford, who, when he could not be reached by the ordinary laws, was impeached in the House of Commons, and who, when still beyond the consequences of that judicial proceeding, was at last destroyed *by the arbitrary wicked mandate of the Legislature*. James the Second lived to ask assistance in the hour of his distress from those who had been cut off from the means of giving it by unjust prosecutions; he lived to ask support from the Earl of Bedford, after his son, the unfortunate Lord Russell, had fallen under the axe of injustice. “I once had a son,” said that noble person, “who could have served your Majesty upon this occasion,” but there was then none to assist him.

I cannot possibly tell how others feel upon these subjects, but I do know how it is their interest to feel concerning them. We ought to be persuaded that the only way by which Government can be honourably or safely supported, is by cultivating the love and affection of the people,—by showing them the value of the constitution by its protection,—by making them understand its principles by the practical benefits derived from them; and, above all, by letting them feel their security in the administration of law and justice.

What is it, in the present state of that unhappy kingdom, the contagion of which fills us with such alarm, that is the just object of terror? What, but that accusation and conviction are the same, and that a false witness or power without evidence is a warrant for death! Not so here! Long may the countries differ! And I am asking for nothing more than that you should decide according to our own wholesome rules, by which our Government was established, and by which it has been ever protected. Put yourselves, gentlemen, in the place of the defendants, and let me ask, if you were brought before your country upon a charge supported by no other evidence than that which you have heard to-day, and encountered by that which I have stated to you, what would you say, or your children after you, if you were touched in your persons or your properties by a conviction? May you never be put to such reflections, nor the country to such disgrace! The best service we can render to the public is, that we should live like one harmonious family, that we should banish all animosities, jealousies, and suspicions of one another; and that, living under the protection of a mild and impartial justice, we should endeavour, with one heart, according to our best judgments, to advance the freedom and maintain the security of Great Britain.

Gentlemen, I will trouble you no farther; I am afraid, indeed, I have too long trespassed on your patience; I will therefore proceed to call my witnesses.

TRIAL of THOMAS HARDY, for High Treason, at the Sessions House in the Old Bailey, 28th of October to 5th of November 1794.

SESSION HOUSE IN THE OLD BAILEY,
Saturday, October 25, 1794.

PRESENT—Lord Chief-Justice EYRE; Lord Chief-Baron MACDONALD; Mr. Baron HOTHAM; Mr. Justice BULLER; Mr. Justice GROSE; and others His Majesty's Justices, &c.

THOMAS HARDY, JOHN HORNE TOOKE, JOHN AUGUSTUS BONNEY, STEWART KYD, JEREMIAH JOYCE, THOMAS HOLCROFT, JOHN RICHTER, JOHN THELWALL, and JOHN BAXTER, were arraigned, and severally pleaded Not guilty.*

THE SPEECH.

GENTLEMEN OF THE JURY,—Before I proceed to the performance of the momentous duty which is at length cast upon me, I desire in the first place to return my thanks to the judges, for the indulgence I have received in the opportunity of addressing you at this later period of the day than the ordinary sitting of the Court, when I have had the refreshment which nature but too much required, and a few hours' retirement to arrange a little in my mind that immense matter, the result of which I must now endeavour to lay before you. I have to thank *you* also, *gentlemen*, for the very condescending and obliging manner in which *you* so readily consented to this accommodation. The Court could only speak for itself, referring me to *you*, whose rest and comforts had been so long interrupted. I shall always remember your kindness.

Before I advance to the regular consideration of this great cause, either as it regards the evidence or the law, I wish first to put aside all that I find in the speech of my learned friend, the Attorney-General, which is either collateral to the merits, or in which I can agree with him. First, then, IN THE NAME OF THE PRISONER, and speaking *his* sentiments, which are well known to be my own also, I concur in the eulogium which you have heard upon the consti-

* The heads of the indictment will be found recited in the opening of Erskine's Speech for Horne Tooke.

tution of our wise forefathers. But before this eulogium can have any just or useful application, we ought to reflect upon what it is which entitles this constitution to the praise so justly bestowed upon it. To say nothing at present of its most essential excellence, or rather the very soul of it, viz., the share the people ought to have in their government by a pure representation, for the assertion of which the prisoner stands arraigned as a traitor before you,—what is it that distinguishes the Government of England from the most despotic monarchies? What, but the security which the subject enjoys in a trial and judgment by his equals; rendered doubly secure as being part of a system of law which no expediency can warp, and which no power can abuse with impunity?

The Attorney-General's second preliminary observation I equally agree to. I anxiously wish with him that you shall bear in memory the anarchy which is desolating France. Before I sit down, I may perhaps, in my turn, have occasion to reflect a little upon its probable causes; but waiting a season for such reflections, let us first consider what the evil is which has been so feelingly lamented, as having fallen on that unhappy country. It is, that, under the dominion of a barbarous state necessity, every protection of law is abrogated and destroyed;—it is, that no man can say, under such a system of alarm and terror, that his life, his liberty, his reputation, or any one human blessing, is secure to him for a moment; it is, that, if accused of federalism, or moderatism, or incivism, or of whatever else the changing fashions and factions of the day shall have lifted up into high treason against the state, he must see his friends, his family, and the light of heaven, no more—the accusation and the sentence being the same, following one another as the thunder pursues the flash. Such *has been* the state of England, such *is* the state of France; and how then, since they are introduced to you for application, ought they in reason and sobriety to be applied? If this prosecution has been commenced (as is asserted) to avert from Great Britain the calamities incident to civil confusion, leading in its issues to the deplorable condition of France, I call upon you, gentlemen, to avert such calamity from falling upon my client, and, through his side, upon yourselves and upon our country. Let not *him* suffer under vague expositions of tyrannical laws, more tyrannically executed. Let not *him* be hurried away to pre-doomed execution, from an honest enthusiasm for the public safety. I ask for him a trial by this applauded constitution of our country; I call upon you to administer the law to him, according to our own wholesome institutions, by its strict and rigid letter. However you may eventually disapprove of any part of his conduct, or viewing it through a false medium may think it even wicked, I claim for him, as a subject of England, that the law shall decide upon its criminal denomination. I protest, in his name, against all appeals to speculations, concerning

consequences, when the law commands us to look only to INTENTIONS. If the state be threatened with evils, let Parliament administer a *prospective* remedy, but let the prisoner hold his life UNDER THE LAW.

Gentlemen, I ask this solemnly of the Court, whose justice I am persuaded will afford it to me; I ask it more emphatically of you, *the jury*, who are called upon your oaths to make a true deliverance of your countryman from this charge; but lastly, and chiefly, I implore it of Him in whose hands are all the issues of life, whose humane and merciful eye expands itself over all the transactions of mankind—at whose command nations rise, and fall, and are regenerated—without whom not a sparrow falleth to the ground;—I implore it of *God Himself*, that He will fill your minds with the spirit of justice and of truth, so that you may be able to find your way through the labyrinth of matter laid before you, a labyrinth in which no man's life was ever before involved in the annals of British trial, nor indeed in the whole history of human justice or injustice.

Gentlemen, the first thing in order is to look at the indictment itself, of the *whole* of which, or of some *integral part*, the prisoner must be found guilty, or be wholly discharged from guilt.

The indictment charges that the prisoners did maliciously and traitorously conspire, compass, and imagine, to bring and put our lord the King to death; and that to fulfil, perfect, and bring to effect their most evil and wicked purpose (*that is to say, of bringing and putting the King to death*) “they met, conspired, consulted, and agreed amongst themselves, and other false traitors unknown, to cause and procure a convention to be assembled within the kingdom, WITH INTENT”—(*I am reading the very words of the indictment, which I entreat you to follow in the notes you have been taking with such honest perseverance*)—“WITH INTENT AND IN ORDER that the persons so assembled at such convention, should and might traitorously, and in defiance of the authority, and against the will of Parliament, subvert and alter, and cause to be subverted and altered, the legislature, rule, and government of the country, and to depose the King from the royal state, title, power, and government thereof.” This is the first and great leading overt act in the indictment; and you observe that it is not charged as being treason SUBSTANTIVELY AND IN ITSELF, but only as it is committed in pursuance of the treason against the King's PERSON, antecedently imputed; for the charge is NOT, that the prisoners conspired to assemble a convention to DEPOSE the King, but that they conspired and compassed his DEATH; and that, in order to accomplish that wicked and detestable purpose, *i.e., in order to fulfil the traitorous intention of the mind against his LIFE*, they conspired to assemble a convention, with a view to depose him. The same observation applies alike to all the other counts or overt acts upon the record, which manifestly,

indeed, lean upon the establishment of the first for their support ; because they charge the publication of different writings, and the provision of arms, *not as distinct offences*, but as acts done to excite to the assembling of the same convention, and to maintain it when assembled : but, above all, and which must never be forgotten, because they also uniformly charge these different acts as committed in fulfilment of the same traitorous purpose **TO BRING THE KING TO DEATH**. You will therefore have three distinct matters for consideration upon this trial : First, What share (if any) the prisoner had, in concert with others, in assembling *any* convention or meeting of subjects within this kingdom ; Secondly, What were the acts to be done by this convention when assembled ; and Thirdly, What was the view, purpose, and intention of those who projected its existence. This third consideration, indeed, comprehends, or rather precedes and swallows up, the other two ; because, before it can be material to decide upon the views of the convention, as pointed to the subversion of the rule and order of the King's political authority (even if such views could be ascribed to it, and brought home even personally to the prisoner), we shall have to examine whether that criminal conspiracy against the established order of the community was hatched and engendered by a wicked contemplation to destroy the *natural life and person* of the King ; and whether the acts charged and established by the evidence were done *in pursuance and in fulfilment of the same traitorous purpose*.

Gentlemen, this view of the subject is not only correct but self-evident. The subversion of the King's political government, and all conspiracies to subvert it, are crimes of great magnitude and enormity, which the law is open to punish, *but neither of them are the crimes before you*. The prisoner is NOT charged with a conspiracy against the King's **POLITICAL GOVERNMENT**, but against his **NATURAL LIFE**. He is not accused of having merely taken steps to depose him from his authority, but with having done so *with the intention to bring him to death*. It is the act with the *specific intention*, and not the act alone, which constitutes the charge. The act of conspiring to depose the King may indeed be evidence, according to circumstances, of an intention to destroy his natural existence, but never as a proposition of law can constitute the intention itself. Where an act is done in pursuance of an intention, surely the intention must first exist ; a man cannot do a thing in fulfilment of an intention, unless his mind first conceives that intention. The doing an act, or the pursuit of a system of conduct, which leads in probable consequences to the death of the King, may legally (if any such be before you) affect the consideration of the traitorous purpose charged by the record, and I am not afraid of trusting you with the evidence. How far any given act, or course of acting, independently of intention, may lead probably or

inevitably to any natural or political consequence, is what we have no concern with: these may be curious questions of casuistry or politics; but it is wickedness and folly to declare that consequences unconnected even with intention or consciousness shall be synonymous in law with the traitorous mind, although the traitorous mind alone is arraigned as constituting the crime.

Gentlemen, the first question consequently for consideration, and to which I must therefore earnestly implore the attention of the Court, is this: **WHAT IS THE LAW UPON THIS MOMENTOUS SUBJECT?** And recollecting that I am invested with no authority, I shall not presume to offer you anything of my own; nothing shall proceed from myself upon this part of the inquiry, but that which is merely introductory, and necessary to the understanding of the authorities on which I mean to rely for the establishment of doctrines, not less essential to the general liberties of England, than to the particular consideration which constitutes our present duty.

First, then, I maintain that that branch of the statute 25th of Edward the Third, which declares it to be high treason "when a man doth compass or imagine the death of the King, of his lady the Queen, or of his eldest son and heir," was intended to guard by a higher sanction than felony the **NATURAL LIVES** of the King, Queen, and Prince; and that no act, therefore (either inchoate or consummate) *of resistance to, or rebellion against, the King's regal capacity*, amounts to *high treason of compassing his death*, unless where they can be charged upon the indictment, and proved to the satisfaction of the jury at the trial, as overt acts committed by the prisoner *in fulfilment of a traitorous intention to destroy the King's NATURAL LIFE*.

Secondly, That the compassing the King's death, or in other words, the traitorous intention to destroy his *natural existence*, is the treason, and not the overt acts, which are only laid as manifestations of the traitorous intention, or in other words, as **EVIDENCE** competent to be left to a jury to prove it; and that no conspiracy to levy war against the King, nor any conspiracy against his *regal character or capacity*, is a good overt act of compassing *his death*, unless some force be exerted, or in contemplation, against **THE KING'S PERSON**; and that such force so exerted or in contemplation is not substantively the treason of compassing, but only competent in point of law to establish it, if the jury by the verdict of guilty draw that conclusion of fact from the evidence of the overt act.

Thirdly, That the charge in the indictment of compassing the King's death is not laid as legal inducement or introduction, to follow as a legal inference from the establishment of the overt act, but is laid as an averment of **A FACT**; and, as such, the very gist of the indictment, to be affirmed or negatived by the verdict of guilty or not guilty.

It will not, I am persuaded, be suspected by the Attorney-General, or by the Court, that I am about to support these

doctrines by opposing my own judgment to the authoritative writings of the venerable and excellent Lord Hale, whose memory will live in this country, and throughout the enlightened world, as long as the administration of pure justice shall exist ; neither do I wish to oppose anything which is to be found in the other learned authorities principally relied upon by the Crown, because all my positions are perfectly consistent with a right interpretation of them ; and because, even were it otherwise, I could not expect successfully to oppose them by any reasonings of my own, which can have no weight but as they shall be found at once consistent with acknowledged authorities, and with the established principles of the English law. I can do this with the greater security, because my respectable and learned friend, the Attorney-General, has not cited cases which have been the disgrace of this country in former times, nor asked you to sanction by your judgment those bloody murders which are recorded by them as acts of English justice ; but, as might be expected of an honourable man, his expositions of the law, though I think them frequently erroneous, are drawn from the same sources which I look up to for doctrines so very different. I find, indeed, throughout the whole range of authorities (*I mean those which the Attorney-General has properly considered as deserving that name and character*), very little contradiction ; for, as far as I can discover, much more entanglement has arisen from now and then a tripping in the expression than from any difference of sentiment amongst eminent and virtuous judges, who have either examined or sat in judgment upon this momentous subject.

Gentlemen, before I pursue the course I have prescribed to myself, I desire most distinctly to be understood, that, in my own judgment, the most successful argument that a conspiracy to depose the King does not necessarily establish the treason charged upon this record IS TOTALLY BESIDE ANY POSSIBLE JUDGMENT THAT YOU CAN HAVE TO FORM UPON THE EVIDENCE BEFORE YOU ; since throughout the whole volumes that have been read, I can trace nothing that even points to the imagination of such a conspiracy ; and consequently the doctrines of Coke, Hale, and Forster, on the subject of high treason, might equally be detailed in any other trial that has ever been proceeded upon in this place. But, gentlemen, I stand in a fearful and delicate situation. As a supposed attack upon the King's civil authority has been transmuted, by construction, into a murderous conspiracy against his natural person, in the same manner, and by the same arguments, a conspiracy to overturn that civil authority by direct force has again been assimilated, *by further construction*, to a design to undermine monarchy, by changes wrought through public opinion, enlarging gradually into universal will ; so that I can admit no false proposition, however wide I may think it of rational application. For as there is a CONSTRUCTIVE COMPASSING, so also there is a CONSTRUCTIVE DEPOSING ; and I cannot, therefore,

possibly know what either of them is separately, nor how the one may be argued to involve the other. There are, besides, many prisoners whose cases are behind, and whose lives may be involved in your present deliberation; their names have been already stigmatised, and their conduct arraigned, in the evidence you have heard, *as a part of the conspiracy*. It is these considerations which drive me into so large a field of argument, because, by sufficiently ascertaining the law in the outset, they who are yet looking up to it for protection may not be brought into peril.

Gentlemen, I now proceed to establish, that a compassing of the death of the King, within the 25th of Edward the Third, *which is the charge against the prisoner*, consists in a traitorous intention against his NATURAL LIFE; and that nothing short of your firm belief of that detestable intention, from overt acts which you find him to have committed, can justify his conviction. That I may keep my word with you in building my argument upon nothing of my own, I hope my friend Mr. Gibbs will have the goodness to call me back, if he finds me wandering from my engagement; that I may proceed step by step upon the most venerable and acknowledged authorities of the law.

In this process I shall begin with Lord Hale, who opens this important subject by stating the reason of passing the statute of the 25th of Edward the Third, on which the indictment is founded. Lord Hale says, in his Pleas of the Crown, vol. i., page 82, that "at common law there was a great latitude used in raising offences to the crime and punishment of treason, by way of interpretation and *arbitrary construction*, which brought in great uncertainty and confusion. Thus accroaching, *i.e., encroaching on royal power*, was a usual charge of treason anciently, though a very uncertain charge; so that no man could tell what it was, or what defence to make to it." Lord Hale then goes on to state various instances of vexation and cruelty, and concludes with this striking observation: "By these and the like instances that might be given, it appears how *arbitrary and uncertain* the law of treason was before the statute of 25th of Edward the Third, whereby it came to pass that almost every offence that was, or seemed to be, a breach of the faith and allegiance due to the King, was by *construction, consequence, and interpretation*, raised into the offence of high treason." This is the lamentation of the great Hale upon the state of this country previous to the passing of the statute, which, he says, was passed as a REMEDIAL law, to put an end to them; and Lord Coke, considering it in the same light, says, in his third Institute, page 2, "The Parliament which passed this statute was called (as it well deserved) *Parliamentum Benedictum*; and the like honour was given to it by the different statutes which from time to time brought back treasons to its standard, all agreeing in magnifying and extolling this blessed Act." Now this statute,

which has obtained the panegyric of these great men, whom the Chief-Justice in his charge looked up to for light and for example, and whom the Attorney-General takes also for his guide, would very little have deserved the high eulogium bestowed upon it, if, though avowedly passed to destroy uncertainty in criminal justice, and to beat down the arbitrary constructions of judges, lamented by Hale as disfiguring and dishonouring the law, it had, nevertheless, been so worded as to give birth to new constructions and uncertainties, instead of destroying the old ones. It would but ill have entitled itself to the denomination of a blessed statute, if it had not in its enacting letter, which professed to remove doubts and to ascertain the law, made use of expressions the best known and understood; and it will be found accordingly that it cautiously did so. It will be found that, in selecting the expression of COMPASSING THE DEATH, it employed a term of the most fixed and appropriate signification in the language of English law, which not only no judge or counsel, but which no attorney or attorney's clerk, could misunderstand; because in former ages, before the statute, compassing the death of ANY MAN had been a felony, and what had amounted to such compassing had been settled in a thousand instances. To establish this, and to show also, by no reasoning of mine, that the term "compassing the death" was intended by the statute, when applied to the King as high treason, to have the same signification as it had obtained in the law when applied to the subject as a felony, I shall refer to Mr. Justice Forster, and even to a passage cited by the Attorney-General himself, which speaks so unequivocally and unanswerably for itself as to mock all commentary. "The ancient writers," says Forster, "in treating of felonious homicide, considered the felonious *intention*, manifested by plain facts, in the same light, in point of guilt, as homicide itself. The rule was, *voluntas reputatur pro facto*; and while this rule prevailed, the nature of the offence was expressed by the term *compassing the death*. This rule has been long laid aside as too rigorous in the case of common persons; but in the case of the *King, Queen, and Prince*, the statute of treasons has, with great propriety, *retained* it in its full extent and vigour; and in describing the offence, has likewise *RETAINED* the ancient mode of expression, when a man doth compass or imagine the death of our lord the King, &c., and thereof be, upon sufficient proof, provably, attainted of open deed, by people of his condition: the words of the statute descriptive of the offence must, *therefore*, be strictly pursued in every indictment for this species of treason. *It must* charge that the defendant did traitorously compass and imagine the King's death; and then go on and charge the several acts made use of by the prisoner to effectuate his traitorous purpose; *for the compassing the King's death is the treason*, and the overt acts are charged as the means made use of to effectuate the intentions and imaginations

of the heart; and therefore, in the case of the Regicides, the indictment charged that they did traitorously compass and imagine the death of the King, and the cutting off the head was laid as the overt act, and the person who was supposed to have given the mortal stroke was convicted on the same indictment."

This concluding instance, though at first view it may appear ridiculous, is well selected as an illustration; because, though in that case there could be no possible doubt of the intention, since the act of a deliberate execution involves, in common sense, the intention to destroy life, yet still the anomaly of the offence, which exists wholly in the INTENTION, and not in the overt act, required the preservation of the form of the indictment. It is surely impossible to read this commentary of Forster without seeing the true purpose of the statute. The common law had anciently considered, even in the case of a fellow-subject, the malignant intention to destroy as equivalent to the act itself; but that noble spirit of humanity which pervades the whole system of our jurisprudence had, before the time of King Edward the Third, eat out and destroyed this rule, too rigorous in its *general* application; but, as Forster truly observes in the passage I have read—"This rule, too rigorous in the case of the subject, the statute of treasons RETAINED in the case of the King, and *retained also the very expression* used by the law when compassing the death of a subject was felony."

The statute, therefore, being expressly made to remove doubts, and accurately to define treason, adopted the ancient expression of the common law as applicable to felonious homicide, meaning that the life of the Sovereign should remain an exception, and that *voluntas pro facto*, the wicked intention for the deed itself (as it regarded his sacred life), should continue for the rule; and, therefore, says Forster, the statute meaning to RETAIN the law, which was before general, RETAINED also the expression. It appears to me, therefore, incontrovertible, not only by the words of the statute itself, but upon the authority of Forster, which I shall follow up by that of Lords Coke and Hale, contradicted by no syllable in their works, as I shall demonstrate, that the statute, as it regarded the security of the King's LIFE, did not mean to enact a new security never known to the common law in other cases, but meant to suffer a common law rule which formerly existed universally, which was precisely known, but which was too severe in common cases, to remain as an exception in favour of the King's security. I do therefore positively maintain, not as an advocate merely, but IN MY OWN PERSON, that, within the letter and meaning of the statute, nothing can be a compassing the death of the King that would not, in ancient times, have been a felony in the case of a subject; for otherwise Forster and Coke, as will be seen, are very incorrect when they say the statute RETAINED the old law, and the appropriate word to express it; for if it went BEYOND it, it would, on the contrary,

have been a NEW rule unknown to the common law, enacted, for the first time, for the preservation of the King's life. Unquestionably the legislature might have made such a rule; but we are not inquiring what it *might* have enacted, but what it *has* enacted. But I ought to ask pardon for having relapsed into any argument of my own upon this subject, when the authorities are more express to the purpose than any language I can use; for Mr. Justice Forster himself expressly says, Discourse First, of High Treason, p. 207: "All the words descriptive of the offence, viz., 'If a man doth compass or imagine, and thereof be attainted of open deed,' are plainly borrowed from the common law, and therefore must bear the *same* construction they did at common law." Is this distinct? I will read it to you again: "All the words descriptive of the offence, viz., 'If a man doth compass or imagine, and thereof be attainted of open deed,' are plainly borrowed from the common law, and therefore must bear the *same* construction they did at common law."

Gentlemen, Mr. Justice Forster is by no means singular in this doctrine. Lord Coke, the oracle of the law, and the best oracle that one can consult, when standing for a prisoner charged with treason, as he was the highest prerogative lawyer that ever existed, maintains the same doctrine; even he, even Coke, the infamous prosecutor of Raleigh, whose character with posterity, as an Attorney-General, my worthy and honourable friend would disdain to hold, to be author of all his valuable works; yet even this very Lord Coke himself holds precisely the same language with Forster, for, in his commentary on this statute, in his third Institute, p. 5, when he comes to the words, "DOTH COMPASS," he says, "Let us see first what the compassing the death of a *subject* was before the making of this statute, when *voluntas reputabatur pro facto*." Now what is the plain English of this? The commentator says, I am going to instruct you, the student, who are to learn from me the law of England, what is a compassing of the death of the KING; but that I cannot do but by first carrying you to look into what was the compassing of the death of A SUBJECT at the ancient common law; because the statute having made a compassing, as applied to the KING, the crime of high treason, which, at common law, was felony in the case of A SUBJECT, it is impossible to define the ONE without looking back to the records which illustrate the OTHER. This is so directly the train of Lord Coke's reasoning, that, in his own singularly precise style of commentating, he immediately lays before his reader a variety of instances from the ancient records and year-books, of compassing the SUBJECT'S DEATH; and what are they? Not acts wholly collateral to attacks upon life, dogmatically laid down by the law from speculations upon probable or possible consequences, but assaults WITH INTENT TO MURDER, conspiracies to waylay the person with the SAME INTENTION, and other MURDEROUS machinations. These

were only compassings before the statute against the subject's life; and the extension of the expression was never heard of in the law till introduced by the craft of political judges, when it became applicable to crimes against THE STATE. Here again I desire to appeal to the highest authorities for this source of constructive treasons; for although the statute of Edward the Third had expressly directed that nothing should be declared to be treason but cases within its enacting letter, yet Lord Hale says, in his Pleas of the Crown, page 83, that "things were so carried by *parties* and *factions* in the succeeding reign of Richard the Second, that this statute was but little observed, but as this or that party got the better. So the crime of high treason was in a manner arbitrarily imposed and adjudged, to the disadvantage of the party that was to be judged; which, by various vicissitudes and revolutions, mischiefed all parties, first and last, and left a great unsettledness and unquietness in the minds of the people, and was one of the occasions of the unhappiness of that King.

"All this mischief was produced by the statute of the 21st of Richard the Second, which enacted, That every man that compasseth or pursueth the death of the King, *or to depose him, or to render up his homage liege*, or he that raiseth people, and rideth against the King, to make war within his realm, and of that be *duly* attainted and adjudged, shall be adjudged a traitor of high treason against the Crown.

"This," says Lord Hale, "was a great snare to the subject, inasmuch that the statute, 1st of Henry Fourth, which repealed it, recited that no man knew how he ought to behave himself, to do, speak, or say, for doubt of such pains of treason; and therefore wholly to remove the prejudice, which might come to the King's subjects, the statute, 1st of Henry Fourth, chap. 10, was made, *which brought back treason to the standard of the 25th of Edward the Third.*"

Now if we look to this statute of Richard the Second, which produced such mischiefs, what are they? As far as it re-enacted the treason of compassing the King's death and levying war, it only re-enacted the statute of Edward the Third, but it went beyond it by the loose construction of compassing to depose the King, and raising the people, and riding to make war, or a compassing to depose him, TERMS NEW TO THE COMMON LAW. *The actual levying of force, to imprison, or depose the King, was already and properly high treason, within the second branch of the statute; but this statute of Richard the Second enlarged only the crime of compassing, making it extend to a compassing to imprison or depose, which are the great objects of an actual levying of war, and making a compassing to levy war on a footing with the actual levying it. It seems, therefore, most astonishing that any Judge could be supposed to have decided, as an abstract rule of law, that a compassing to imprison or depose the King was high treason, SUBSTANTIVELY, WITHOUT PREVIOUS*

COMPASSING OF HIS DEATH : since it was made so by this statute, 21st of Richard the Second, and reprobated, stigmatised, and repealed by the statute 1st of Henry Fourth, chap. 10. "And so little effect," says Mr. Justice Blackstone, "have over-violent laws to prevent any crime, that within two years after this new law of treason respecting imprisonment and deposing, this very prince was both deposed and murdered."

Gentlemen, this distinction, made by the humane statute of Edward the Third, between treason against the King's natural life and rebellion against his civil authority, and which the act of Richard the Second for a season broke down, is founded in wise and sound policy. A successful attack may be made upon the King's person by the malignity of an individual, without the combination of extended conspiracy or the exertions of rebellious force ; the law, therefore, justly stands upon the watch to crush the first overt manifestation of so evil and detestable a purpose. Considering the life of the chief magistrate as infinitely important to the public security, it does not wait for the possible consummation of a crime, which requires neither time, combination, nor force to accomplish, but considers the traitorous purpose as a consummated treason : but the wise and humane policy of our forefathers extended the severity of the rule, *voluntas pro facto*, no further than they were thus impelled and justified by the necessity ; and therefore an intention to levy war and rebellion, not consummated, however manifested by the most overt acts of conspiracy, was not declared to be treason, and upon the plainest principle in the world ; the King's REGAL capacity, guarded by all the force and authority of the State, could not, like his NATURAL existence, be overthrown or endangered in a moment by the first machinations of the traitorous mind of an individual, or even by the unarmed conspiracy of numbers ; and therefore this humane and exalted institution, measuring the sanctions of criminal justice by the standard of civil necessity, thought it sufficient to scourge and dissipate unarmed conspirators by a less vindictive proceeding.

These new treasons were, however, at length all happily swept away on the accession of King Henry the Fourth, which brought the law back to the standard of Edward the Third ; and, indeed, in reviewing the history of this highly-favoured island, it is most beautiful, and at the same time, highly encouraging to observe, by what an extraordinary concurrence of circumstances, under the superintendence of a benevolent Providence, the liberties of our country have been established. Amidst the convulsions, arising from the maddest ambition and injustice, and whilst the State was alternately departing from its poise, on one side, and, on the other, the great rights of mankind were still insensibly taking root and flourishing ;—though sometimes monarchy threatened to lay them prostrate, though aristocracy occasionally undermined them, and

democracy, in her turn, rashly trampled on them, yet they have ever come safely round at last.—This awful and sublime contemplation should teach us to bear with one another when our opinions do not quite coincide; extracting final harmony from the inevitable differences which ever did, and ever must, exist amongst men.

Gentlemen, the act of Henry the Fourth was scarcely made when it shared the same fate with the venerable law which it restored. Nobody regarded it. It was borne down by factions, and, in those days, there were no judges, as there are now, to hold firm the balance of justice amidst the storms of state;—men could not then, as the prisoner can to-day, look up for protection to magistrates independent of the Crown, and awfully accountable in character to an enlightened world. As fast as arbitrary constructions were abolished by one statute, unprincipled judges began to build them up again, till they were beat down by another: to recount their strange treasons would be tiresome and disgusting; but their system of construction, in the teeth of positive law, may be well illustrated by two lines from Pope:

“Destroy his fib and sophistry in vain,
The creature's at his dirty work again.”

This system, both judicial and parliamentary, became indeed so intolerable, in the interval between the reign of Henry the Fourth, and that of Philip and Mary, that it produced, in the first year of the latter reign, the most remarkable statute that ever passed in England, repealing not only all former statutes upon the subject, except that of Edward the Third, but also stigmatising, upon the records of Parliament, the arbitrary CONSTRUCTIONS of judges, and limiting them, in all times, to every LETTER of the statute. I will read to you Lord Coke's commentary upon the subject. In his third Institute, page 23, he says,—“Before the act of the 25th of Edward the Third, so many treasons had been made and declared, and in such sort penned, as not only the ignorant and unlearned people, but also learned and expert men, were trapped and snared, . . . so as the mischief before Edward the Third, of the uncertainty of what was treason and what not, became so frequent and dangerous, as that the safest and surest remedy was by this excellent act of Mary to abrogate and repeal all, but only such as are specified and expressed in this statute of Edward the Third. By which law the safety of both the King and of the subject, and the preservation of the common weal, were wisely and sufficiently provided for, and in such certainty, that *nihil relictum est arbitrio judicis*.” The whole evil, indeed, to be remedied and avoided by the act of Queen Mary was, the *arbitrium judicis*, or judicial construction beyond the LETTER of the statute. The statute itself was perfect, and was restored in its full vigour; and to suppose, therefore, that when an act was expressly made, because judges had

built treasons by constructions beyond the law, they were to be left, consistently with their duty, to go on building AGAIN, is to impute a folly to the legislature, which never yet was imputed to the framers of this admirable statute. But this absurd idea is expressly excluded, not merely by the statute, according to its plain interpretation, but according to the direct authority of Lord Coke himself, in his commentary upon it. For he goes on to say, "Two things are to be observed, first, that the word *expressed*, in the statute of Mary, excludes all *implications or inferences whatsoever*: secondly, that no former attainder, judgment, precedent, resolution, or opinion of judges, or justices, of high treason, other than such as are specified and expressed in the statute of Edward the Third, are to be followed or drawn into example. For the words be plain and direct; that from henceforth no act, deed, or offence shall be taken, had, deemed, or adjudged to be high treason, but only such as are declared and expressed in the said act of the 25th of Edward the Third, any Act of Parliament or statute after 25th of Edward the Third, or any other declaration or matter, to the contrary notwithstanding."

Gentlemen, if the *letter* of the statute of Mary, when coupled with Lord Coke's commentary, required further illustration, it would amply receive it from the PREAMBLE, which ought to be engraved on the heart of every man who loves the King, or who is called to any share in his councils; for, as Lord Coke observes, in the same commentary: It truly recites, that "the state of a King standeth and consisteth more assured by the love and favour of the subjects towards their Sovereign, than in the dread and fear of laws, made with rigorous and extreme punishment; and that laws, justly made for the preservation of the common weal, without extreme punishment or penalty, are more often and for the most-part better kept and obeyed, than laws and statutes made with extreme punishment."

But, gentlemen, the most important part of Lord Coke's commentary on this statute is yet behind, which I shall presently read to you, and to which I implore your most earnest attention; because I will show you by it, that the unfortunate man, whose innocence I am defending, is arraigned before you of high treason, upon evidence not only wholly repugnant to this particular statute, but such as never yet was heard of in England upon any capital trial:—EVIDENCE which, even with all the attention you have given to it, I defy any one of you, at this moment, to say of what it consists;—EVIDENCE, which (since it must be called by that name) I tremble for my boldness in presuming to stand up for the life of a man, when I am conscious that I am incapable of understanding from it even what acts are imputed to him; EVIDENCE, which has consumed four days in the reading;—not in reading the acts of the prisoner, but the unconnected writings of men, unknown to one another, upon a hundred different subjects;—EVIDENCE, the very listening to

which has deprived me of the sleep which nature requires;—which has filled my mind with unremitting distress and agitation, and which, from its discordant, unconnected nature, has suffered me to reap no advantage from the indulgence, which I began with thanking you for; but which, on the contrary, has almost set my brain on fire, with the vain endeavour of collecting my thoughts upon a subject never designed for any rational course of thinking.

Let us, therefore, see how the unexampled condition I am placed in falls in with Lord Coke upon this subject, whose authority is appealed to by the Crown itself; and let us go home and burn our books if they are to blazon forth the law by eulogium, and accurately to define its protector, which yet the subject is to be totally cut off from, when even under the sanction of these very authors, he stands upon his trial for his existence. Lord Coke says, in the same commentary (page 12) that the statute had not only accurately defined the CHARGE, but the nature of the PROOF on which alone a man shall be attainted of any of the branches of high treason.—“It is to be observed,” says he, “that the word in the act of Edward the Third is *provablement*: i.e., Upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of wit, but upon good and sufficient proof. And herein the adverb *provably* hath a great force, and signifieth a DIRECT, PLAIN proof, which word the Lords and Commons in Parliament did use for that the offence of treason was so heinous, and was so heavily and severely punished, as none other the like, and therefore the offender must be PROVABLY attainted, which words are as forcible as upon direct and manifest proof. Note, the word is not *probably*, for then *commune argumentum* might have served, but the word is *provably* be attainted.”

Nothing can be so curiously and tautologously laboured as this commentary, of even that great prerogative lawyer, Lord Coke, upon this single word in the statute; and it manifestly shows, that, so far from its being the spirit and principle of the law of England, to loosen the construction of this statute, and to adopt rules of construction and proof, unusual in trials for other crimes, on the contrary, the legislature did not even leave it to the judges to apply the ordinary rules of legal proof to trials under it, but admonished them to do justice in that respect in the very body of the statute.

Lord Hale treads in the same path with Lord Coke, and concludes this part of the subject by the following most remarkable passage—vol. i. chap. xi. 86:—

“Now although the crime of high treason is the greatest crime against faith, duty, and human society, and brings with it the greatest and most fatal dangers to the government, peace, and happiness of a kingdom, or state; and therefore is deservedly branded with the highest ignominy, and subjected to the greatest

penalties that the laws can inflict : it appears, first, How necessary it was that there should be some *known, fixed, settled* boundary for this great crime of treason, and of what great importance the statute of 25th of Edward the Third was, in order to that end. Second, How dangerous it is to depart from the *letter* of that statute, and to multiply and enhance crimes into treason by ambiguous and general words, such as accroaching royal power, subverting fundamental laws, and the like. And third, How dangerous it is by construction, and ANALOGY, to make treasons where the *letter* of the law has not done it. For such a method admits of no limits, or bounds, but runs as far and as wide as the wit and invention of accusers, and the detestation of persons accused, will carry men."

Surely the admonition of this supereminent Judge ought to sink deep into the heart of every Judge, and of every jurymen, who is called to administer justice under this statute ; above all, in the times and under the peculiar circumstances which assemble us in this place. Honourable men feeling, as they ought, for the safety of Government, and the tranquillity of the country, and naturally indignant against those who are supposed to have brought them into peril, ought for that very cause to proceed with more abundant caution, lest they should be surprised by their resentments or their fears ; they ought to advance, in the judgments they form, by slow and trembling steps ;—they ought even to fall back and look at everything again, lest a false light should deceive them, admitting no fact but upon the foundation of clear and precise evidence, and deciding upon no intention that does not result with equal clearness from the fact. This is the universal demand of justice in every case criminal or civil ;—how much more then in this, when the judgment is every moment in danger of being swept away into the fathomless abyss of a thousand volumes ; where there is no anchorage for the understanding ; where no reach of thought can look round in order to compare their points ; nor any memory be capacious enough to retain even the imperfect relation that can be collected from them ?

Gentlemen, my mind is the more deeply affected with this consideration by a very recent example in that monstrous phenomenon which, under the name of a trial, has driven us out of Westminster Hall for a large portion of my professional life. No man is less disposed than I am to speak lightly of great state prosecutions, which bind to their duty those who have no other superiors, nor any other control ; last of all am I capable of even glancing a censure against those who have led to or conducted the impeachment, because I respect and love many of them, and know them to be amongst the best and wisest men in the nation.—I know them indeed so well, as to be persuaded that could they have foreseen the vast field it was to open, and the length of time it was to occupy, they never would have engaged in it ; for I defy any man, not

illuminated by the Divine Spirit, to say with the precision and certainty of an English Judge deciding upon evidence before him, that Mr. Hastings is guilty or not guilty:—for who knows what is before him, or what is not?—Many have carried what they knew to their graves, and the living have lived long enough to forget it. Indeed, I pray God that such another proceeding may never exist in England; because I consider it as a dishonour to the constitution, and that it brings, by its example, insecurity into the administration of justice.* Every man in civilised society has a right to hold his life, liberty, property, and reputation, under plain laws that can be well understood, and is entitled to have some *limited specific* part of his conduct compared and examined by their standard; but he ought not for seven years, no, nor for seven days, to stand as a criminal before the highest human tribunal, until judgment is bewildered and confounded, to come at last, perhaps, to defend himself, broken down with fatigue, and dispirited with anxiety, which indeed is my own condition at this moment, who am only stating the case of another,—what, then, must be the condition of the unfortunate person whom you are trying?

The next great question is, How the admonitions of these great writers are to be reconciled with what is undoubtedly to be found in other parts of their works? and I think I do not go too far, when I say, that it ought to be the inclination of every person's mind who is considering the meaning of any writer, particularly if he be a person of superior learning and intelligence, to reconcile as much as possible all he says upon any subject, and not to adopt such a construction as necessarily raises up one part in direct opposition to another.

The law itself, indeed, adopts this sound rule of judgment in the examination of every matter which is laid before it, for a sound construction; and the judges, therefore, are bound by duty as well as reason to adopt it.

It appears to me, then, that the only ambiguity which arises, or can possibly arise, in the examination of the great authorities, and in the comparison of them with themselves, or with one another, is from not rightly understanding the meaning of the term *OVERT ACT* as applied to this species of treason. The moment you get right upon the true meaning and signification of this expression, the curtain is drawn up, and all is light and certainty.

Gentlemen, an overt act of the high treason charged upon this record, I take, with great submission to the Court, to be plainly and simply this:—the high treason charged is the compassing or imagining (in other words, the intending or designing) the death of the King—I mean his *NATURAL DEATH*; which being a hidden operation of the mind, an overt act is anything which legally

* It was the good fortune of Mr. Erskine to remedy, in his own person, the evil thus complained of, when he presided as Chancellor on the trial of Lord Melville.

proves the existence of such traitorous design and intention—I say, that the design against the King's natural life is the high treason under the first branch of the statute ; and whatever is evidence which may be legally laid before a jury to judge of the traitorous intention, is a legal overt act ; because an overt act is nothing but legal evidence embodied upon the record.

The charge of compassing being a charge of *intention*, which, without a manifestation by *conduct*, no human tribunal could try ; the statute requires by its very letter (but without which letter reason must have presumed) that the intention to cut off the Sovereign should be manifested by an open act ; and as a prisoner charged with an intention could have no notice how to defend himself without the charge of actions from whence the intention was to be imputed to him, it was always the practice, according to the sound principles of English law, to state upon the face of the indictment the overt act, which the Crown charges as the means made use of by the prisoner to effect his traitorous purpose ; and as this rule was too frequently departed from, the statute of the seventh of King William enacted, for the benefit of the prisoner, that no evidence should even be given of any overt act not charged in the indictment. The charge, therefore, of the overt acts in the indictment is the notice, enacted by statute to be given to the prisoner for his protection, of the means by which the Crown is to submit to the jury the existence of the traitorous purpose, which is the crime alleged against him, and in pursuance of which traitorous purpose the overt acts must also be charged to have been committed. Whatever, therefore, is relevant or competent evidence to be received in support of the traitorous intention, is a legal overt act, and what acts are competent to that purpose, is (as in all other cases) matter of law for the judges ; but whether, after the overt acts are received upon the record as competent, and are established by proof upon the trial, they be sufficient or insufficient in the particular instance, to convince the jury of the traitorous compassing or intention, is a mere matter of *FACT*, which, from its very nature, can be reduced to no other standard than that which each man's own conscience and understanding erect in his mind, as the arbiter of his judgment. This doctrine is by no means new nor peculiar to high treason, but pervades the whole law, and may be well illustrated in a memorable case lately decided upon writ of error in the House of Lords, and which must be in the memory of all the judges now present, who took a part in its decision :—there the question was, whether, upon the establishment of a number of facts by legal evidence, the defendant had knowledge of a fact, the knowing of which would leave him defenceless. To draw that question from the jury to the judges, I demurred to the evidence, saying, that though each part of it was legally admitted, it was for the law, by the mouth of the judges, to pronounce whether this fact of know-

ledge could legally be inferred from it ; but the Lords, with the assent of all the judges, decided, to my perfect satisfaction, that such a demurrer to the evidence was irregular and invalid ; *that the province of the jury over the effect of evidence ought not to be so transferred to the judges, and converted into matter of law ;*—that what was relevant evidence to come before a jury, was the province of the Court,—but that the *conclusion* to be drawn from admissible evidence, was the unalienable province of the country.

To apply that reasoning to the case before us :—The matter to be inquired of here is, the fact of the prisoner's intention, as in the case I have just cited it was the fact of the defendant's knowledge. The charge of a conspiracy to depose the King is, therefore, laid before you to establish that intention ; its competency to be laid before you for that purpose, is not disputed ; I am only contending with all reason and authority on my side, that it is to be submitted to your consciences and understandings, whether, even if you believed the overt act, you believe also that it proceeded from a traitorous machination against the life of the King. I am only contending, that these two beliefs must coincide to establish a verdict of guilty. I am not contending that, under circumstances, a conspiracy to depose the King, and to annihilate his regal capacity, may not be strong and satisfactory evidence of the intention to destroy his *LIFE* ;—but only that in this, as in every other instance, it is for you to collect or not to collect this treason against the King's life, according to the result of your conscientious belief and judgment, from the acts of the prisoner laid before you ; and that the establishment of the overt act, even if it were established, does not establish the treason against the King's life, *BY A CONSEQUENCE OF LAW* ; but on the contrary, the overt act, though punishable in another shape, as an independent crime, is a dead letter upon this record, unless you believe, *exercising your exclusive jurisdiction over the facts laid before you*, that it was committed in accomplishment of the treason against *THE NATURAL LIFE OF THE KING*.

Gentlemen, this particular crime of compassing the King's death is so complete an anomaly, being wholly seated in unconsummated intention, that the law cannot depart from describing it according to its real essence, even when it is followed by his death :—a man cannot be indicted for killing the King, as was settled in the case of the regicides of Charles the First, after long consultation among all the judges :—it was held that the very words of the statute must be pursued, and that although the King was actually murdered, the prisoners who destroyed him could not be charged with the act itself, as high treason, but with the compassing of his death ; the very act of the executioner in beheading him, being only laid as the overt act upon the record. There though the overt act was so connected with, as to be even inseparable from the traitorous intention, yet they were not confounded because of the effect of the

precedent in dissimilar cases : and although the regicides came to be tried immediately on the restoration of the King, in the day-spring of his authority, and before high prerogative judges, and under circumstances when, in any country but England, their trial would have been a mockery, or their execution have been awarded without even the forms of trial ; yet in England, that sacred liberty, which has for ever adorned the constitution, refused to sacrifice to zeal or enthusiasm, either the substance or the forms of justice. Hear what the Chief Baron pronounced upon that occasion : "These persons are to be proceeded with according to the laws of the land, and I shall speak nothing to you but what are *the words of the law*. By the statute of Edward the Third, it is made high treason to compass and imagine the death of the King ; in no case else imagination or compassing, without an actual effect, is punishable by law." He then speaks of the sacred life of the King, and speaking of the treason, says : "The treason consists in the wicked imagination which is not apparent ; but when this poison swells out of the heart, and breaks forth into action, in that case it is high treason. *Then what is an overt act of an imagination, or compassing of the King's death ? Truly, it is anything which shows what the imagination of the heart is.*"

Indeed, gentlemen, the proposition is so clear that one gets confounded in the argument from the very simplicity of it ; but still I stand in a situation which I am determined at all events to fulfil to the utmost, and I shall therefore not leave the matter upon these authorities, but will bring it down to our own times, repeating my challenge to have produced one single authority in contradiction. Lord Coke, in his third Institute, page 11 and 12, says :—"The indictment must charge that the prisoner traitorously compassed and imagined the death and destruction of the King." He says too, "There must be a compassing or imagination ; for an act without compassing, intent, or imagination, is not within the act, as appeareth by the express letter thereof. *Et actus non facit reum nisi mens sit rea.*" Nothing in language can more clearly illustrate my proposition. The indictment, like every other indictment, must charge distinctly and specifically the crime ; that charge must therefore be in the very words of the statute which creates the crime, the crime created by the statute not being the perpetration of any act, but being, in the rigorous severity of the law, the very contemplation, intention, and contrivance of a purpose directed to an act ; that contemplation, purpose, and contrivance, must be found to exist, without which, says Lord Coke, there can be no compassing, and as the intention of the mind cannot be investigated without the investigation of conduct, the overt act is required by the statute, and must be laid in the indictment and proved. It follows from this deduction, that upon the clear principles of the English law, every act may be laid as an overt act of compassing the

King's death, which may be reasonably considered to be relevant and competent to manifest that intention ; for were it otherwise, it would be shutting out from the view of the jury certain conduct of the prisoner which might, according to circumstances, lead to manifest the criminal intention of his mind ; and as more than one overt act may be laid, and even overt acts of different kinds, though not in themselves substantively treason, the judges appear to be justified in law, when they ruled them to be overt acts of compassing the death of the King ; because they are such acts as before the statute of King William, which required that the indictment should charge all overt acts, would have been held to be relevant proof ; of which relevancy of proof the judges are to judge as matter of law ; and therefore being relevant proof, must also be relevant matter of charge, because nothing can be relevantly charged which may not also be relevantly admitted to proof. These observations explain to the meanest capacity in what sense Lord Coke must be understood, when he says, in the very same page, that "A preparation to depose the King, and to take the King by force and strong hand, until he has yielded to certain demands, is a sufficient overt act to *prove* the compassing of the King's death." He does not say, AS A PROPOSITION OF LAW, that he who prepares to seize the King compasseth his death, but that a preparation to seize him is a sufficient overt act TO PROVE the compassing ; and he directly gives the reason, "because of the strong tendency it has to that end." This latter sentence destroys all ambiguity. I agree perfectly with Lord Coke, and I think every judge would so decide, upon the general principles of law and evidence, without any resort to his authority for it ; and for this plain and obvious reason :—The judges who are by law to decide upon the relevancy or competency of the proof, in every matter criminal and civil, have immemorially sanctioned the indispensable necessity of charging the traitorous intention as the crime, before it was required by the statute of King William. As the crime is in its nature invisible and inscrutable, until manifested by such conduct as in the eye of reason is indicative of the intention which constitutes the crime, no overt act is therefore held to be sufficient to give jurisdiction, even to a jury, to draw the inference in fact of the traitorous purpose, but such acts from whence it may be reasonably inferred ; and therefore as the restraint and imprisonment of a prince has a greater tendency to his destruction than in the case of a private man, such conspiracies are admitted to be laid as overt acts, upon this principle : that if a man does an act from whence either an inevitable or a mainly probable consequence may be expected to follow, much more if he persists deliberately in a course of conduct, leading certainly or probably to any given consequence, it is reasonable to believe that he foresaw such consequence, and by pursuing his purpose with that foreknowledge, the intention to produce the con-

sequence may be fairly imputed. *But then all this is matter of fact for the jury from the evidence, not matter of law for the Court ;* further than it is the privilege and duty of the Judge to direct the attention of the jury to the evidence, and to state the law as it may result from the different views the jury may entertain of the facts ; and if such acts could not be laid as overt acts, they could not be offered in evidence ; and if they could not be offered in evidence, the *mind* of the prisoner, which it was the object of the trial to lay open as a clue to his intention, would be shut up and concealed from the jury, whenever the death of the Sovereign was sought by circuitous but obvious means, instead of by a direct and murderous machination. But when they are thus submitted, as matter of charge and evidence to prove the traitorous purpose which is the crime, the security of the King and of the subject is equally provided for ; all the matter which has a relevancy to the crime is chargeable and provable, not *substantively* to raise from their establishment a *legal* inference, but to raise a presumption in *fact*, capable of being weighed by the jury with all the circumstances of the transaction, as offered to the Crown and the prisoner ; their province being finally to say, not what was the possible or the probable consequence of the overt act laid in the indictment, but whether it has brought them to a safe and conscientious judgment of the guilt of the prisoner, *i.e.*, of his guilt in compassing the death of the King, which is the treason charged in the indictment. Lord Hale is, if possible, more direct and explicit upon the subject ; he says, page 107, "The words 'compass or imagine' are of a great latitude ; they refer to the purpose or design of the *mind or will*, though the purpose or design takes not effect ; but compassing or imagining, singly of itself, is an *internal* act, and without something to *manifest* it, could not possibly fall under any judicial cognisance but of God alone, and therefore this statute requires such an *overt act* as may render the compassing or imagining capable of a trial and sentence by human judicatures." Now, can any man possibly derive from such a writing (proceeding too from an author of the character of Lord Hale), that an overt act of compassing might in his judgment be an act committed inadvertently without the intention ? Can any man gather from it that a man, by falling into bad company, can be drawn in to be guilty of this species of treason by rash conduct, while the love of his Sovereign was glowing in his bosom ? Can there be any particular acts which can entitle a Judge or counsel to pronounce *as a matter of law*, what another man intends ? or that what a man intends is *not* a matter of fact ? Is there any man that will meet the matter fairly, and advance and support that naked proposition ? At all events, it is certainly not a proposition to be dealt with publicly, because the man whose mind is capable even of conceiving it, should be treasured up in a museum, and exhibited there as a curiosity for money.

Gentlemen, all I am asking, however, from my argument—and I defy any power of reason upon earth to move me from it—is this: that the prisoner, being charged with *intending the King's death*, you are to find whether this charge be founded or unfounded; and that, therefore, put upon the record what else you will, prove what you will, read these books over and over again, and let us stand here a year and a day in discoursing concerning them,—still the question must return at last to what YOU and YOU ONLY can resolve, *Is he guilty of that base, detestable intention to destroy the King?* NOT whether you incline to *believe* that he is guilty; NOT whether you *suspect*, nor whether it be *probable*; NOT whether he *may* be GUILTY; no, but that PROVABLY HE IS GUILTY. If you can say this upon the evidence, it is your duty to say so, and you may, with a tranquil conscience, return to your families, though by your judgment the unhappy object of it must return no more to his. Alas! gentlemen, what do I say? HE has no family to return to; the affectionate partner of his life has already fallen a victim to the surprise and horror which attended the scene now transacting. But let that melancholy reflection pass—it should not, perhaps, have been introduced—it certainly ought to have no effect upon you who are to judge upon your oaths. I do not stand here to desire you to commit perjury from compassion; but at the same time my earnestness may be forgiven, since it proceeds from a weakness common to us all. I claim no merit with the prisoner for my zeal; it proceeds from a selfish principle inherent in the human heart. I am counsel, gentlemen, for myself. In every word I utter I feel that I am pleading for the safety of my own life, for the lives of my children after me, for the happiness of my country, and for the universal condition of civil society throughout the world.

But let us return to the subject, and pursue the doctrine of Lord Hale upon the true interpretation of the term overt act, as applicable to this branch of treason. Lord Hale says, and I do beseech most earnestly the attention of the Court and jury to this passage, “If men conspire the death of the King, and thereupon provide weapons or send letters, this is an overt act within the statute.” Take this to pieces, and what does it amount to?—“If men conspire the death of the King,” *that* is the first thing, viz., the *intention*, “and thereupon,” that is, in pursuance of that *wicked intention*, “provide weapons or send letters for the execution thereof,” i.e., for the execution of that destruction of the King which they have meditated, “this is an overt act within the statute.” Surely the meaning of all this is self-evident. If the intention be against the King's life, though the conspiracy does not immediately and directly point to his death, yet still the overt act will be sufficient if it be something which has so direct a tendency to that end as to be competent rational evidence of the intention to obtain it. But the instances given by Lord Hale himself furnish the best illus-

tration: "If men conspire to imprison the King by *force and a strong hand* until he has yielded to certain demands, and *for that purpose gather company or write letters*, that is an overt act to *prove* the compassing the King's death, as it was held in Lord Cobham's case by all the judges." In this sentence Lord Hale does not depart from that precision which so eminently distinguishes all his writings; he does not say, that if men conspire to imprison the King until he yields to certain demands, and for that purpose to do so and so, *this is high treason*—no, nor even an overt act of high treason, though he might in legal language correctly have said so; but to prevent the possibility of confounding the treason with matter which may be legally charged as relevant to *the proof of it*, he follows Lord Coke's expression in the third Institute, and says, This is an overt act *to prove* the compassing of the King's death; and as if by this mode of expression he had not done enough to keep the ideas asunder, and from abundant regard for the rights and liberties of the subject, he immediately adds, "But then there must be an overt act *to prove* that conspiracy; and then that overt act *to prove* such design, is an overt act *to prove* the compassing of the death of the King." The language of this sentence labours in the ear from the excessive caution of the writer; afraid that his reader should jump too fast to his conclusion upon a subject of such awful moment, he pulls him back after he has read that a conspiracy to imprison the King is an overt act to prove the compassing of his death, and says to him, But recollect that there must be an overt act to *PROVE*, in the first place, that conspiracy to imprison the King, and even then that intention to imprison him so manifested by the overt act, is but in its turn an overt act to *PROVE* the compassing or intention to destroy the King. Nor does the great and benevolent Hale rest even here, but after this almost tedious perspicuity, he begins the next sentence with this fresh caution and limitation, "But then this must be intended of a conspiracy, *forcibly* to detain and imprison the King." What then is a conspiracy forcibly to imprison the King?—surely it can require no explanation: it can only be a *direct* machination to seize and detain his *PERSON* by rebellious force. Will this expression be satisfied by a conspiracy to seize speculatively upon his authority by the publication of pamphlets, which, by the inculcation of republican principles, may in the eventual circulation of a course of years, perhaps in a course of centuries, in this King's time, or in the time of a remote successor, debauch men's minds from the English constitution, and, by the destruction of monarchy, involve the life of the monarch? Will any man say that this is what the law means by a conspiracy against the King's government, supposing even that a conspiracy against his government were synonymous with a design upon his life? Can any case be produced where a person has been found guilty of high treason, under this branch of the

statute, where no war has been actually levied, unless where the conspiracy has been a forcible invasion of the King's personal liberty or security? I do not mean to say that a conspiracy to levy war may not, in many instances, be laid as an overt act of compassing the King's death, because the war may be mediately or immediately pointed distinctly to his destruction or captivity; and as Lord Hale truly says, "Small is the distance between the prisons and graves of princes." But multiply the instances as you will, still the principle presents itself. The truth of this very maxim, built upon experience, renders an overt act of this description rational and competent evidence to be left to a jury of a design against the King's life; but it does not, therefore, change the nature of the crime, nor warrant any Court to declare the overt act to be legally and conclusively indicative of the traitorous intention; because, if this be once admitted to be law, and the jury are bound to find the treason upon their belief of the existence of the overt act, the trial by the country is at an end, and the judges are armed with an arbitrary uncontrollable dominion over the lives and liberties of the nation.

Gentlemen, I will now proceed to show you that the doctrines which I am insisting on have been held by all the great judges of this country, in even the worst of times, and that they are, besides, not at all peculiar to the case of high treason, but pervade the whole system of the criminal law. Mr. Justice Forster, so justly celebrated for his writings, lays down the rule thus:—It may be laid down as a general rule, that "*indictments founded upon penal statutes, ESPECIALLY THE MOST PENAL, must pursue the statute so as to bring the party within it.*" And this general rule is so expressly allowed to have place in high treason, that it is admitted on all hands that an indictment would be radically and incurably bad, unless it charged the compassing of the King's death as the leading and fundamental averment, and unless it formally charged the overt act to be committed in order to effectuate the traitorous purpose. Nobody ever denied this proposition; and the present indictment is framed accordingly. Now it is needless to say that if the benignity of the general law requires this precision in the indictment, the proof must be correspondingly precise, for otherwise the subject would derive no benefit from the strictness of the indictment; the strictness of which can have no other meaning in law or common sense than the protection of the prisoner; for if, though the indictment must directly charge a breach of the very LETTER of the statute, the prisoner could nevertheless be convicted by evidence not amounting to a breach of the LETTER, then the strictness of the indictment would not only be no protection to the prisoner, but a direct violation of the first principles of justice, criminal and civil, which call universally for the proof of all material averments in every legal proceeding. But Mr. Justice Forster

expressly adverts to the necessary severity of proof as well as of charge ; for he says, that " although a case is brought within the reason of a penal statute, and within the *mischief* to be prevented, yet, if it does not come within the unequivocal *letter*, ' the benignity of the law interposeth.' " If the law then be thus severe in the interpretation of every penal proceeding, even down to an action for the killing of a hare or a partridge, are its constructions only to be enlarged and extended as to the statute of high treason, although the single object of passing it was to guard against constructions ?

Gentlemen, the reason of the thing is so palpably and invincibly in favour of this analogy, that it never met with a direct opposition. The Attorney-General himself distinctly admits it in one part of his address to you, though he seems to deny it in another. I hope that when I state one part of his speech to be in diametrical opposition to another, he will not suppose that I attribute the inconsistency to any defect, either in his understanding or his heart ; far from it—they arise, I am convinced, from some of the authorities not being sufficiently understood.

In the beginning of his speech he admits that the evidence must be satisfactory and convincing as to the intention ; but in the latter part, he seems, as it were, to take off the effect of that admission. I wish to give you the very words. I took them down at the time ; and if I do not state them correctly I desire to be corrected. " I most distinctly disavow," said my honourable friend, " every case of construction. I most distinctly disavow any like case of treason not within the letter of the statute. I most distinctly disavow cumulative treason. I most distinctly disavow enhancing guilt by parity of reason. The question undoubtedly is, whether the proof be full and satisfactory to your reasons and consciences that the prisoner is guilty of the treason of compassing the King's death." Gentlemen, I hope that this will always with equal honour be admitted. Now let us see how the rest of the learned gentleman's speech falls in with this.—For he goes on to say, that it is by no means necessary that the distinct, specific intention should pre-exist the overt act. " If the overt act," says he, " be deliberately committed, it is a compassing." But how so, if the intention be admitted to be the treason ? What benefit is obtained by the rigorous demand of the statute, that the compassing of the King's death shall be charged by the indictment as the crime, if a crime different, or short of it, can be substituted for it in the proof ? And how can the statute of Richard the Second be said to be repealed, which made it high treason to compass to depose the King, independently of intention upon his life, if the law shall declare, notwithstanding the repeal, that they are synonymous terms, and that the one **CONCLUSIVELY** involves the other !

Gentlemen, if we examine the most prominent cases which have

come in judgment before judges of the most unquestionable authority, and after the constitution had become fixed, you will find everything that I have been saying to you justified and confirmed.

The first great state trial after the Revolution was the case of Sir John Freind, a conspirator in the assassination plot. Sir John Freind was indicted for compassing and imagining the death of King William; and the overt acts charged, and principally relied on, were, first, the sending Mr. Charnock into France to King James, to desire him to persuade the French King to send forces over to Great Britain, to levy war against and to depose the King, and that Mr. Charnock was actually sent; and, secondly, the preparing men to be levied to form a corps to assist in the restoration of the Pretender, and the expulsion of King William, of which Sir John Freind was to be colonel.—In this case, if the proofs were not to be wholly discredited, and the overt acts were consequently established, they went rationally to convince the mind of every man of the pre-existing intention to destroy the King. The conspiracy was not to do an act which, though it might lead eventually and speculatively to the King's death, might not be foreseen or designed by those who conspired together:—the conspiracy was not directed to an event probably leading to another and a different one, and from the happening of which second a third still different might be engendered, which third might again lead in its consequences to a fourth state of things, which might, in the revolution of events, bring on the death of the King, though never compassed or imagined:—Freind's conspiracy, on the contrary, had for its *direct* and *immediate* object the restoration of the Pretender to the throne by the junction of foreign and rebellious force. In my opinion (and I am not more disposed than others to push things beyond their mark in the administration of criminal justice), Sir John Freind, if the evidence against him found credit with the jury, could have no possible defence; since the evidence went directly to prove the despatch of Charnock to France, under his direction, to invite the French King to bring over the Pretender into England, and to place him on the throne. The intention, therefore, of Sir John Freind to cut off King William, was a clear inference from the overt act in question; not an inference of *law* for the Court, but of *fact* for the jury, under the guidance of plain common sense; because the consequence of the Pretender's regaining the throne must have been the attainder of King William by Act of Parliament. Some gentlemen seem to look as if they thought not—but I should be glad to hear the position contradicted. I repeat, that if the Pretender had been restored as King of England, the legal consequence would have been that King William would have been a traitor and an usurper, and subject as such to be tried at the Old Bailey, or wherever else the King, who took his place, thought fit to bring him to judgment. From these

premises, therefore, there could be no difficulty of inferring the intention; and therefore if ever a case existed where, from the clearness of the inference, the province of the jury might have been overlooked, and the overt act confounded with the treason, it was in the instance of Freind; but so far was this from being the case, that you will find, on the contrary, everything I have been saying to you since I began to address you, summed up and confirmed by that most eminent magistrate Lord Chief-Justice Holt, who presided upon that trial.

He begins thus:—"Gentlemen of the Jury, look ye, the treason that is mentioned in the indictment is conspiring, compassing, and imagining the death of the King. *To prove the conspiracy and design of the King's DEATH*, two principal overt acts are insisted on." He does not consider the overt act of conspiracy and consultation to be the treason, but evidence (as it undoubtedly was in that case) to prove the compassing the death. The Chief-Justice then states the two overt acts above-mentioned, and sums up the evidence for and against the prisoner, and leaves the intention to the jury *as matter of fact*. For it is not till afterwards that he comes to answer the prisoner's objection in point of law, as the Chief-Justice in terms puts it—"There is another thing," said Lord Chief-Justice Holt, "he did insist upon, *and that is matter of law*. The statute 25th Edward the Third was read, which is the great statute about treasons, and that does contain divers species of treason, and declares what shall be treason: one treason is the compassing and imagining the death of the King; another is the levying war. Now, says he" (*i.e.*, Freind), "here is no war actually levied; and a bare conspiracy to levy war does not come within the law against treason." To pause here a little: Freind's argument was this—Whatever my intentions might be—whatever my object of levying war might have been—whatever might have been my design to levy it—however the destruction of the King might have been effected by my conspiracy, if it had gone on—and however it might have been my intention that it should,—it is not treason within the 25th Edward the Third. To which Holt replied, a little incorrectly in language but right in substance—"Now for that I must tell you, if there be only a conspiracy to levy war, it is *not* treason:" *i.e.*, it is not a substantive treason: it is not a treason in the abstract. "But if the design and conspiracy be either to kill the King, or to depose him, or imprison him, or put any force or restraint upon him," *i.e.*, personal restraint by force, "and the way of effecting these purposes *is by levying a war*; there the conspiracy and consultation to levy war for that purpose is high treason, though no war be levied: for such consultation and conspiracy is *an overt act* PROVING the compassing the death of the King." But what sort of war is it the bare conspiracy to levy which is an overt act to prove a design against the King's life, though no war be

actually levied? Gentlemen, Lord Holt himself illustrates this matter so clearly, that if I had anything at stake short of the honour and life of the prisoner, I might sit down as soon as I had read it:—for if one did not know it to be an extract from an ancient trial, one would say it was admirably and accurately written for the present purpose. It is a sort of prophetic bird's-eye view of what we are engaged in at this moment:—"There may be war levied (continues Lord Holt in Freind's case) without any design upon the King's person, which, if *actually levied*, is high treason, though purposing and designing such a levying of war is not so. As, for example, if persons do assemble themselves, and act with force, in opposition to some law, and hope thereby to get it repealed; this is a levying war, and treason, *though the purposing and designing of it is not so*. So when they endeavour, in great numbers, *with force* to make reformation of their own heads, without pursuing the methods of the law, that is a levying war, *but the purpose and designing is not so*. But if there be, as I told you, a purpose and design *to destroy the King and*" (not *or* to depose him, but *and* to depose him) "to depose him from his throne, which is proposed and designed to be effected by war that is to be levied; such a conspiracy and consultation to levy war *for the bringing this to pass*" (*i.e.*, for bringing the King's death to pass), "is an overt act of high treason. So that, gentlemen, as to that objection which he makes, IN POINT OF LAW, it is of no force, if there be evidence sufficient to convince you that he did conspire to levy war FOR SUCH AN END." And he concludes by again leaving the intention expressly to the jury.

It is THE END THEREFORE FOR WHICH the war is to be levied, and not the conspiracy to do any act which the law considers as a levying of war, that constitutes an overt act of treason against the King's life. The most rebellious movements towards a reform in *government*, not directed against the *King's person*, will not, according to Lord Holt, support the charge before you.—I might surround the House of Commons with fifty thousand men, for the express purpose of forcing them, by duress, to repeal any law that is offensive to me, or to pass a bill for altering elections, without being a possible object of *this* prosecution.—Under the other branch of the statute, I might indeed be convicted of levying war, but not of compassing the King's death; and if I only conspired and meditated this rising to repeal laws by rebellion, I could be convicted of nothing but a high misdemeanour.—I would give my friends the case upon a special verdict, and let them hang me if they could.—How much more might I give it them if the conspiracy imputed was not to effect a reform by violence, but, as in the case before us, by pamphlets and speeches, which might produce universal suffrage, which universal suffrage might eat out and destroy aristocracy, which destruction might lead to the fall of Monarchy, and in the end, to the death of the King.—Gentlemen, if the cause were not

too serious, I should liken it to the play with which we amuse our children : This is the cow with the crumpledy horn, which gored the dog, that worried the cat, that ate the rat, &c., ending in the house which Jack built.

I do therefore maintain, upon the express authority of Lord Holt, that, to convict a prisoner, charged with this treason, it is absolutely necessary that you should be satisfied of his *intention against the King's life as charged in the indictment*, and that no design against the King's government will even be a legal overt act to be left to a jury as the evidence of such an intention (much less the substantive and consummate treason), unless the conspiracy be directly pointed against the person of the King. The case of Lord George Gordon is opposed to this as a high and modern decision ; and the Attorney-General descended indeed to a very humble and lowly authority, when he sought to maintain his argument by my own speech, as counsel for that unfortunate person. The passage of it alluded to lies at this moment before me ; and I shall repeat it, and re-maintain it to-day.—But let it first be recollected that Lord George Gordon was not indicted for compassing or imagining the King's death, under the first branch of the statute, but for levying war under the second. It never indeed entered into the conception of any man living, that such an indictment could have been maintained, or attempted against him : I appeal to one of your Lordships now present, for whose learning and capacity I have the greatest and highest respect, and who sat upon that trial, that it was not insinuated from the Bar, much less adjudged by the Court, that the evidence had *any bearing upon the first branch of treason*. I know that I may safely appeal to Mr. Justice Buller for the truth of this assertion ; and nothing surely in the passage from my address to the jury, has the remotest allusion to assimilate a conspiracy against the King's government (collateral to his person) with a treason against his life. My words were, "*To compass, or imagine the death of the King* ; such imagination, or purpose of the mind, visible only to its great Author, being manifested by some open act ; an institution obviously directed, not only to the security of his natural person, but to the stability of the Government ; the life of the Prince being so interwoven with the constitution of the State, that an attempt to destroy the one, is justly held to be a rebellious conspiracy against the other." *

What is this but to say that the King's sacred life is guarded by higher sanctions than the ordinary laws, because of its more inseparable connection with the public security, and that an attempt to destroy it is therefore made treason against the State ? But the Attorney-General is, I am sure, too correct in his logic to say, that the converse of the proposition is therefore maintained, and that an attack upon the King's authority, without design upon his person,

* See the Speech for Lord George Gordon, p. 53.

is affirmed by the same expression to be treason against his life. His correct and enlarged mind is incapable of such confusion of ideas.

But it is time to quit what fell from me upon this occasion, in order to examine the judgment of the Court, and to clothe myself with the authority of that great and venerable magistrate, whose memory will always be dear to me, not only from the great services he rendered to his country in the administration of her justice, but on account of the personal regard and reverence I had for him when living.

Lord Mansfield, in delivering the law to the jury upon Lord George Gordon's trial (I appeal to the trial itself, and to Mr. Justice Buller, now present, who agreed in the judgment), expressly distinguished between the safety provided for the King's *natural person*, by the first branch of the statute, and the security of his executive power under the second. That great Judge never had an idea that the *natural* person of the King, and the *majesty* of the King, were the same thing, nor that the treasons against them were synonymous: he knew, on the contrary, for he knew all that was to be known, that as *substantive* crimes they never had been blended. I will read his own words:—"There are two kinds of levying war:—one against the person of the King; to imprison, to dethrone, or to kill him; or to make him change measures, or remove counsellors:—the other, which is said to be levied against the majesty of the King, or in other words, against him in his regal capacity; as when a multitude rise and assemble to attain by force and violence any object of a general public nature; that is levying war against the majesty of the King; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government; and, by force of arms, to restrain the King from reigning according to law." But then observe, gentlemen, *the war must be actually levied*; and here again I appeal to Mr. Justice Buller, for the words of Lord Mansfield, expressly referring for what he said to the authority of Lord Holt, in Sir John Freind's case, already cited: "Lord Chief-Justice Holt, in Sir John Freind's case, says:—If persons do assemble themselves and act with force, in opposition to some law which they think inconvenient, and hope thereby to get it repealed, this is a levying war and treason. In the present case it don't rest upon an implication that they hoped by opposition to a law to get it repealed; but the prosecution proceeds upon the direct ground, that the object was, by *force and violence*, to compel the legislature to repeal a law; and therefore, without any doubt, I tell you the joint opinion of us all, that, if this multitude assembled *with intent, by acts of force and violence*, to compel the Legislature to repeal a law, it is high treason." Let these words of Lord Mansfield be taken down, and then show me the man, let his rank

and capacity be what they may, who can remove me from the foundation on which I stand, when I maintain that a conspiracy to levy war for the objects of reformation, is not only not the high treason charged by this indictment, when not directly pointed against the King's person, but that even the actual levying it would not amount to the constitution of the crime. But this is the least material part of Lord Mansfield's judgment, as applicable to the present question; for he expressly considers *THE INTENTION* of the prisoner; whatever be the act of treason alleged against him, to be all in all. So far from holding the probable or even inevitable consequence of the thing done as constituting the quality of the act, he pronounces them to be nothing as separated from the *criminal design* to produce them. Lord George Gordon assembled an immense multitude around the House of Commons, a system so opposite to that of the persons accused before this commission, that it appears from the evidence they would not even allow a man to come amongst them, because he had been Lord George's attorney. The Lords and Commons were absolutely blockaded in the chambers of Parliament; and if control was the intention of the prisoner, it must be wholly immaterial what were the deliberations that were to be controlled; whether it was the continuance of Roman Catholics under penal laws, the repeal of the Septennial Act, or a total change of the structure of the House of Commons, that was the object of violence;—the attack upon the legislature of the country would have been the same. That the multitude were actually assembled round the Houses, and brought there by the prisoner, it was impossible for me as his counsel even to think of denying, nor that their tumultuous proceedings were not in effect productive of great intimidation, and even danger, to the Lords and Commons, in the exercise of their authority:—neither did I venture to question the law, that the assembling the multitude *for that purpose*, was levying war within the statute. Upon these facts, therefore, applied to the doctrines we have heard upon this trial, there would have been nothing in Lord George Gordon's case to try; he must have been instantly, without controversy, convicted. But Lord Mansfield did not say to the jury (according to the doctrines that have been broached here), that if they found the multitude assembled by the prisoner, were in fact palpably intimidating and controlling the Parliament in the exercise of their functions, he was guilty of high treason, *whatever his intentions might have been*. He did not tell them that the inevitable consequence of assembling a hundred thousand people round the Legislature, being a control on their proceedings, was therefore a levying war; though collected from folly and rashness, without the *intention* of violence or control. If this had been the doctrine of Lord Mansfield, there would (as I said before) have been nothing to try; for I admitted in terms, that his conduct was the extremity of rashness, and totally incon-

sistent with his rank in the country, and his station as a member of the House of Commons. But the venerable magistrate never for a moment lost sight of the grand ruling principle of criminal justice, that crimes can have no seat but in the mind ; and upon the prisoner's *intention*, and upon his *intention alone*, he expressly left the whole matter to the jury, with the following directions, which I shall read verbatim from the trial :—" Having premised these several propositions and principles, the subject-matter for your consideration naturally resolves itself into two points :

" First, Whether this multitude did assemble and commit acts of violence, with intent to terrify and compel the legislature to repeal the act called Sir George Savile's. If upon this point your opinion should be in the negative, that makes an end of the whole, and the prisoner ought to be acquitted ; but if your opinion should be, that *the intent of this multitude*, and the violence they committed, was to force a repeal, there arises a second point—

" Whether the prisoner at the bar incited, encouraged, promoted, or assisted in raising this insurrection, and the terror they carried with them, **WITH THE INTENT** of forcing a repeal of this law.

" Upon these two points, which you will call your attention to, depends the fate of this trial ; for if either the multitude had *no such intent*, or *supposing they had*, if the prisoner was *no cause*, *did not excite* and took no part in conducting, counselling, or fomenting the insurrection, the prisoner ought to be acquitted : and there is no pretence that he personally concurred in any act of violence."

I therefore consider the case of Lord George Gordon as a direct authority in my favour.

To show that a conspiracy to depose the King, independently of ulterior intention against his life, is high treason within the statute, the Attorney-General next supposes that traitors had conspired to depose King William, but still to preserve him as stadtholder in Holland, and asks whether that conspiracy would not be a compassing his death : to that question I answer, that it would not have been a compassing the death of King William, provided the conspirators could have convinced the jury that their firm and *bonâ fide* intention was to proceed no further, and that, under that belief and impression, the jury (as they lawfully might) had negatived by their finding the fact of the intention against the King's natural existence. I have no doubt at all that upon such a finding no judgment of treason could be pronounced : but the difficulty would be to meet with a jury who, upon the bare evidence of such a conspiracy, would find such a verdict. There might be possible circumstances to justify such a negative of the intention, but they must come from the prisoner. In such a case the Crown would rest upon the conspiracy to depose, which would be *primâ facie* and cogent evidence of the compassing, and leave the hard task of

rebutting it on the defendants—I say the hard task, because the case put is of a direct rebellious force, acting against the King; not only abrogating his authority, but imprisoning and expelling his person from the kingdom. I am not seeking to abuse the reasons and consciences of juries in the examination of facts, but am only resisting the confounding them with arbitrary propositions of law.

Gentlemen, I hope I have now a right to consider that the existence of the high treason charged against the unfortunate man before you is a matter of fact for your consideration upon the evidence. To establish this point has been the scope of all that you have been listening to, with so much indulgence and patience. It was my intention to have further supported myself by a great many authorities which I have been laboriously extracting from the different books of the law; but I find I must pause here, lest I consume my strength in this preliminary part of the case, and leave the rest defective.

Gentlemen, the persons named in the indictment are charged with a conspiracy to subvert the rule, order, and government of this country; and it is material that you should observe most particularly the means by which it alleges this purpose was to be accomplished. The charge is not of a conspiracy to hold the convention in Scotland, which was actually held there; nor of the part they took in its actual proceedings; but the overt act, to which all the others are subsidiary and subordinate, is a supposed conspiracy to hold a convention in England, which never, in fact, was held; and consequently, all the vast load of matter which it has been decided you should hear, that does not immediately connect itself with the charge in question, is only laid before you (as the Court has repeatedly expressed it) to prove that in point of fact such proceedings were had, the quality of which is for your judgment; and as far, and as far only, as they can be connected with the prisoner, and the act which he stands charged with, to be left to you as evidence of the intention with which the holding of the second convention was projected.

THIS INTENTION is therefore the whole cause—for the charge is not the agreement to hold a convention, which it is notorious, self-evident, and even admitted that they intended to hold; but the agreement to hold it *for the purpose alleged, of assuming all the authority of the State, and in fulfilment of the main intention against the life of the King.* Unless, therefore, you can collect this double intention from the evidence before you, the indictment is not maintained.

Gentlemen, the charge being of a conspiracy which, if made out in point of fact, involved beyond all controversy, and within the certain knowledge of the conspirators, the lives of every soul that was engaged in it; the first observation which I shall make to you

(because in reason it ought to precede all others) is, that every act done by the prisoners, and every sentence written by them, in the remotest degree connected with the charge, or offered in evidence to support it, were done and written in the public face of the world—the transactions which constitute the whole body of the proof were not those of a day, but in regular series for two years together; they were not the peculiar transaction of the prisoners, but of immense bodies of the King's subjects in various parts of the kingdom, assembled without the smallest reserve, and giving to the public, through the channel of the daily newspapers, a minute and regular journal of their whole proceedings. Not a syllable have we heard read in the week's imprisonment we have suffered that we had not, all of us, read for months and months before the prosecution was heard of; and which, if we are not sufficiently satiated, we may read again upon the file of every coffee-house in the kingdom. It is admitted distinctly by the Crown that a reform in the House of Commons is the ostensible purpose of all the proceedings laid before you; and that the attainment of that object only is the grammatical sense of the great body of the written evidence. It rests, therefore, with the Crown to show by **LEGAL PROOF** that this **OSTENSIBLE** purpose, and the whole mass of correspondence upon the table, was only a cloak to conceal a hidden machination, to subvert by force the entire authorities of the kingdom, and to assume them to themselves. Whether a reform of Parliament be a wise or an unwise expedient; whether, if it were accomplished, it would ultimately be attended with benefits or dangers to the country, I will not undertake to investigate, and for this plain reason: because it is wholly foreign to the subject before us. But when we are trying the integrity of men's intentions, and are examining whether their complaints of defects in the representation of the House of Commons be *bonâ fide*, or only a mere stalking-horse for treason and rebellion, it becomes a most essential inquiry whether they be the first who have uttered these complaints; whether they have taken up notions for the first time which never occurred to others; and whether in seeking to interfere practically in an alteration of the constitution, they have manifested, by the novelty of their conduct, a spirit inconsistent with affection for the Government, and subversive of its authority. Gentlemen, I confess for one (for I think the safest way of defending a person for his life before an enlightened tribunal is to defend him ingenuously)—I confess for one, that if the defects in the constitution of Parliament, which are the subject of the writings, and the foundation of all the proceedings before you, had never occurred to other persons at other times, or if not new, they had only existed in the history of former conspiracies, I should be afraid you would suspect, at least, that the authors of them were plotters of mischief. In such a case I should naturally expect that you would ask yourselves this question

—Why should it occur to the prisoner at the bar, and to a few others in the year 1794, immediately after an important revolution in another country, to find fault, on a sudden, with a constitution which had endured for ages without the imputation of defect, and which no good subject had ever thought of touching with the busy hand of reformation? I candidly admit that such a question would occur to the mind of every reasonable man, and could admit no favourable answer. But surely this admission entitles me, on the other hand, to the concession that if, in comparing their writings and examining their conduct with the writings and conduct of the best and most unsuspected persons in the best and most unsuspected times, we find them treading in the paths which have distinguished their highest superiors; if we find them only exposing the same defects, and pursuing the same or similar courses for their removal—it would be the height of wickedness and injustice to torture expressions, and pervert conduct, into treason and rebellion, which had recently lifted up others to the love of the nation, to the confidence of the sovereign, and to all the honours of the State. The natural justness of this reasoning is so obvious that we have only to examine the fact; and considering under what auspices the prisoners are brought before you, it may be fit that I should set out with reminding you that the great Earl of Chatham began and established the fame and glory of his life upon the very cause which my unfortunate clients were engaged in, and that he left it as an inheritance to the present Minister of the Crown, as the foundation of his fame and glory after him; and his fame and glory were accordingly raised upon it; and if the Crown's evidence had been carried as far back as it might have been (for the institution of only one of the two London Societies is before us), you would have found that the Constitutional Society owed its earliest credit with the country, if not its very birth, to the labour of the present Minister, and its professed principles to his Grace the Duke of Richmond, high also in His Majesty's present Councils, whose plan of reform has been clearly established by the whole body of the written evidence, and by every witness examined for the Crown, to have been the type and model of all the societies in the supposed conspiracy, and uniformly acted upon in form and in substance by the prisoner before you, up to the very period of his confinement.

Gentlemen, the Duke of Richmond's plan was universal suffrage and annual Parliaments; and urged too with a boldness, which, when the comparison comes to be made, will leave in the background the strongest figures in the writings on the table. I do not say this sarcastically; I mean to speak with the greatest respect of his Grace, both with regard to the wisdom and integrity of his conduct; for although I have always thought in politics with the illustrious person whose letter was read to you; although I think,

with Mr. Fox, that annual Parliaments and universal suffrage would be nothing like an improvement in the constitution; yet I confess that I find it easier to say so than to answer the Duke of Richmond's arguments on the subject; and I must say, besides, speaking of his Grace from a long personal knowledge, which began when I was counsel for his relation, Lord Keppel, that independently of his illustrious rank, which secures him against the imputation of trifling with its existence, he is a person of an enlarged understanding, of extensive reading, and of much reflection; and that his book cannot therefore be considered as the effusion of rashness and folly, but as the well-weighed, though perhaps erroneous, conclusions drawn from the actual condition of our affairs—viz., that without a speedy and essential reform in Parliament (and there my opinion goes along with him), the very being of the country, as a great nation, would be lost. This plan of the Duke of Richmond was the grand mainspring of every proceeding we have to deal with. You have had a great number of loose conversations reported from societies, on which no reliance can be had; sometimes they have been garbled by spies, sometimes misrepresented by ignorance, and even if correct, have frequently been the extravagances of unknown individuals, not even uttered in the presence of the prisoner, and totally unconnected with any design; for whenever their proceedings are appealed to, and their real object examined, by living members of them, brought before you by the Crown, to testify them under the most solemn obligations of truth, they appear to have been following, in form and in substance, the plans adopted within our memories, not only by the Duke of Richmond, but by hundreds of the most eminent men in the kingdom. The Duke of Richmond formerly published his plan of reform in the year 1780, in a letter to Lieutenant-Colonel Sharman, who was at that time practically employed upon the same object in Ireland; and this is a most material part of the case; because you are desired to believe that the terms *convention* and *delegates*, and the holding the one, and sending the other, were all collected from what had recently happened in France, and were meant as the formal introduction of her republican constitution. But they who desire you to believe all this, do not believe it themselves; because they know certainly, and it has indeed already been proved by their own witnesses, that conventions of reformers were held in Ireland, and delegates regularly sent to them, whilst France was under the dominion of her ancient government. They knew full well that Colonel Sharman, to whom the Duke's letter was addressed, was at that very moment supporting a convention in Ireland at the head of ten thousand men in arms for the defence of their country, without any commission from the King, any more than poor Franklow had, who is now in Newgate, for regimenting sixty. These volunteers asserted and saved the liberties of Ireland;

and the King would, at this day, have had no more subjects in Ireland than he now has in America, if they had been treated as traitors to the Government. It was never imputed to Colonel Sharman and the volunteers, that they were in rebellion, yet they had arms in their hands, which the prisoners never dreamed of having; whilst a grand general convention was actually sitting under their auspices at the Royal Exchange of Dublin, attended by regular delegates from all the counties in Ireland. And who were these delegates? I will presently tear off their names from this paper and hand it to you. They were the greatest, the best, and proudest names in Ireland; men who had the wisdom to reflect (before it was too late for reflection), that greatness is not to be supported by tilting at inferiors, till, by the separation of the higher from the lower orders of mankind, every distinction is swept away in the tempest of revolution, but in the happy harmonisation of the whole community; by conferring upon the people their rights; sure of receiving the auspicious return of affection, and of ensuring the stability of the Government which is erected upon that just and natural basis. Gentlemen, they who put this tortured construction on conventions and delegates, know also that repeated meetings of reforming societies, both in England and Scotland, had assumed about the same time the style of conventions, and had been attended by regular delegates long before the phrase had, or could have, any existence in France; and that upon the very model of these former associations a formal convention was actually sitting at Edinburgh, with the Lord Chief Baron of Scotland in the chair, for promoting a reform in Parliament, at the very moment the Scotch convention, following its example, assumed that title.

To return to this letter of the Duke of Richmond. It was written to Colonel Sharman, in answer to a letter to his Grace, desiring to know his plan of reform, which he accordingly communicated by the letter which is in evidence; and which plan was neither more nor less than that adopted by the prisoners of surrounding Parliament (unwilling to reform its own corruptions), not by armed men or by importunate multitudes, but by the still and universal voice of a whole people CLAIMING THEIR KNOWN AND UNALIENABLE RIGHTS. This is so precisely the plan of the Duke of Richmond, that I have almost borrowed his expressions. His Grace says, "The lesser reform has been attempted with every possible advantage in its favour; not only from the zealous support of the advocates for a more effectual one, but from the assistance of men of great weight, both in and out of power. But with all these temperments and helps it has failed. Not one proselyte has been gained from corruption, nor has the least ray of hope been held out from any quarter, that the House of Commons was inclined to adopt any other mode of reform. The weight of

corruption has crushed this more gentle, as it would have defeated any more efficacious, plan in the same circumstances. From that quarter, therefore, I have nothing to hope. IT IS FROM THE PEOPLE AT LARGE THAT I EXPECT ANY GOOD ; and I am convinced that the only way to make them feel that they are really concerned in the business is to contend for their *full, clear, and indisputable rights of universal representation*." Now, how does this doctrine apply to the defence of the prisoner? I maintain that it has the most decisive application ; because this book has been put into the hands of the Crown witnesses, who have, one and all of them, recognised it, and declared it to have been *bonâ fide* the plan which they pursued.

But are the Crown's witnesses worthy of credit? If they are not, let us return home, since there is no evidence at all, and the cause is over. All the guilt, if any there be, proceeds from their testimony. If they are not to be believed, they have proved nothing, since the Crown cannot force upon you that part of the evidence which suits its purpose, and ask you to reject the other which does not. The witnesses are either entirely credible, or undeserving of all credit, and I have no interest in the alternative. This is precisely the state of the cause. For with regard to all the evidence that is written, let it never be forgotten that it is not upon me to defend my clients against it, but for the Crown to extract from it the materials of accusation. They do not contend that the treason is upon the surface of it, but in the latent intention ; which intention must therefore be supported by extrinsic proof ; but which is nevertheless directly negatived and beat down by every witness they have called, leaving them nothing but commentaries and criticisms against both fact and language, to which, for the present, I shall content myself with replying in the authoritative language of the Court, in the earliest stage of their proceedings.

"If there be ground to consider the professed purpose of any of these associations, a *reform in Parliament*, as mere colour, and as a pretext held out in order to cover deeper designs—designs against the whole constitution and government of the country ; the case of those embarked in such designs is that which I have already considered. Whether this be so or not, is mere matter of fact ; as to which I shall only remind you that an inquiry into a charge of this nature, which undertakes to make out that the ostensible purpose is a mere veil, under which is concealed a traitorous conspiracy, requires cool and deliberate examination, and the most attentive consideration, and that the result should be perfectly clear and satisfactory. In the affairs of common life, no man is justified in imputing to another a meaning contrary to what he himself expresses, but upon the fullest evidence." To this (though it requires nothing to support it, either in reason or authority) I desire to add the direction of Lord Chief-Justice Holt to the jury, on the trial of Sir John Perkyne :—

"Gentlemen, it is not fit that there should be any strained or forced construction put upon a man's actions when he is tried for his life. You ought to have a full and satisfactory evidence that he is guilty, before you pronounce him so."

In this assimilation of the writings of the societies to the writings of the Duke of Richmond and others, I do not forget that it has been truly said by the Lord Chief-Justice in the course of this very cause, that ten or twenty men's committing crimes, furnishes no defence for other men in committing them. Certainly it does not; and I fly to no such sanctuary; but in trying the prisoner's intentions, and the intentions of those with whom he associated and acted, if I can show them to be only insisting upon the same principles that have distinguished the most eminent men for wisdom and virtue in the country, it will not be very easy to declaim or argue them into the pains of death, whilst our bosoms are glowing with admiration at the works of those very persons who would condemn them.

Gentlemen, it has been too much the fashion of late to overlook the genuine source of all human authority, but more especially totally to forget the character of the British House of Commons as a representative of the people;—whether this has arisen from that assembly's having itself forgotten it, would be indecent for me to inquire into or to insinuate;—but I shall preface the authorities which I mean to collect in support of the prisoner, with the opinion on that subject of a truly celebrated writer, whom I wish to speak of with great respect: I should, indeed, be ashamed, particularly at this moment, to name him invidiously, whilst he is bending beneath the pressure of a domestic misfortune, which no man out of his own family laments more sincerely than I do.*—No difference of opinion can ever make me forget to acknowledge the sublimity of his genius, the vast reach of his understanding, and his universal acquaintance with the histories and constitutions of nations; I also disavow the introduction of the writings, with the view of involving the author in any apparent inconsistencies, which would tend, indeed, to defeat rather than to advance my purpose.—I stand here to-day to claim at your hands, a fair and charitable interpretation of human conduct, and I shall not set out with giving an example of uncharitableness.—A man may have reason to change his opinions, or perhaps the defect may be in myself, who collect that they are changed; I leave it to God to judge of the heart—my wish is, that Christian charity may prevail;—that the public harmony, which has been lost, may be restored;—that all England may reunite in the bonds of love and affection;—and that, when the Court is broken up by the acquittal of the prisoners, all heart-burnings and animosities may cease;—that, whilst yet we work in the light, we may try how we can save our country by a common

* Mr. Burke's son was then dying.

effort ; and that, instead of shamelessly setting one-half of society against the other by the force of armed associations, and the terrors of courts of justice, our spirits and our strength may be combined in the glorious cause of our country.—By this, I do not mean in the cause of the present war, which I protest against as unjust, calamitous, and destructive ; but this is not the place for such a subject, I only advert to it to prevent mistake or misrepresentation.

The history and character of the English House of Commons was formerly thus described by Mr. Burke : “ The House of Commons was supposed originally to be *no part of the standing government of this country*, but was considered as a *control* issuing *immediately* from the people, and speedily to be resolved into the mass from whence it arose : in this respect it was in the higher part of government what juries are in the lower. The capacity of a magistrate being transitory, and that of a citizen permanent, the latter capacity, it was hoped, would of course preponderate in all discussions, not only between the people and the standing authority of the Crown, but between the people and the fleeting authority of the House of Commons itself. It was hoped, that, being of a middle nature, between subject and government, they would feel with a more tender and a nearer interest, everything that concerned the people, than the other remoter and more permanent parts of legislature.

“ Whatever alterations time and the necessary accommodation of business may have introduced, this character can never be sustained, unless the House of Commons shall be made to bear some stamp of the actual disposition of the people at large : it would (among public misfortunes) be an evil more natural and tolerable, that the House of Commons should be infected with every epidemical frenzy of the people, as this would indicate some consanguinity, some sympathy of nature with their constituents, than that they should, in all cases, be wholly untouched by the opinions and feelings of the people out of doors. By this want of sympathy, they would cease to be a House of Commons.

“ The virtue, spirit, and essence of a House of Commons consist in its being the express image of the feelings of the nation. It was not instituted to be a control *upon* the people, as of late it has been taught, by a doctrine of the most pernicious tendency, but as a control *for* the people.”

He then goes on to say, that to give a technical shape, a colour, dress, and duration to popular opinion, is the true office of a House of Commons.—Mr. Burke is unquestionably correct :—the control *UPON* the people is the King's Majesty, and the hereditary privileges of the Peers ;—the balance of the state is the control *FOR* the people upon both, in the existence of the House of Commons ;—but how can that control exist *FOR* the people, unless they have the actual election of the House of Commons, which, it is most notorious, they have not ? —I hold in my hand a state of the representation which, if the thing

were not otherwise notorious, I would prove to have been lately offered in proof to the House of Commons, by an honourable friend of mine now present, whose motion I had the honour to second, where it appeared that 12,000 people return near a majority of the House of Commons, and those again, under the control of about 200. But though these facts were admitted, all redress and even discussion was refused.—What ought to be said of a House of Commons that so conducts itself, it is not for me to pronounce ; I will appeal, therefore, to Mr. Burke, who says, “ that a House of Commons, which in all disputes between the people and administration presumes against the people, which punishes their disorders, but refuses even to inquire into their provocations, is an unnatural, monstrous state of things in the constitution.”

But this is nothing : Mr. Burke goes on afterwards to give a more full description of Parliament, and in stronger language (let the Solicitor-General take it down for his reply) than any that has been employed by those who are to be tried at present as conspirators against its existence. I read the passage, to warn you against considering hard words against the House of Commons as decisive evidence of treason against the King. The passage is in a well-known work, called, “ Thoughts on the Causes of the PRESENT Discontents ;” and such discontents will always be PRESENT whilst their causes continue. The word PRESENT will apply just as well *now*, and much better than to the times when the honourable gentleman wrote his book ; for we are now in the heart and bowels of another war, and groaning under its additional burdens. I shall therefore leave it to the learned gentleman, who is to reply, to show us what has happened since our author wrote, which renders the Parliament less liable to the same observations now.

“ It must be always the wish of an unconstitutional statesman, that a House of Commons, who are entirely dependent upon him, should have every right of the people entirely dependent upon their pleasure. For it was soon discovered that the forms of a free, and the ends of an arbitrary government, were things not altogether incompatible.

“ The power of the Crown, almost dead and rotten as prerogative, has grown up anew, with much more strength and far less odium, under the name of influence. An influence which operated without noise and violence ; which converted the very antagonist into the instrument of power ; which contained in itself a perpetual principle of growth and renovation ; and which the distresses and the prosperity of the country equally tended to augment, was an admirable substitute for a prerogative, that, being only the offspring of antiquated prejudices, had moulded in its original stamina irresistible principles of decay and dissolution.”

What is this but saying that the House of Commons is a settled and scandalous abuse fastened *upon* the people, instead of being an

antagonist power *for* their protection ; an odious instrument of power in the hands of the Crown, instead of a popular balance *against* it? Did Mr. Burke mean that the prerogative of the Crown, properly understood and exercised, was an antiquated prejudice? Certainly not ; because his attachment to a properly-balanced monarchy is notorious. Why then is it to be fastened upon the prisoners, that they stigmatise monarchy, when they also exclaim *only against its corruptions*? In the same manner, when he speaks of the abuses of Parliament, would it be fair to Mr. Burke to argue, from the strict legal meaning of the expression, that he included, in the censure on Parliament, the King's person, or majesty, which is part of the Parliament? In examining the work of an author you must collect the sense of his expressions from the subject he is discussing ; and if he is writing of the House of Commons as it affects the structure and efficacy of the Government, you ought to understand the word Parliament so as to meet the sense and obvious meaning of the writer. Why, then, is this common justice refused to others? Why is the word Parliament to be taken in its strictest and least obvious sense against a poor shoemaker, or any plain tradesman at a Sheffield club, while it is interpreted in its popular, though less correct acceptation, in the works of the most distinguished scholar of the age? Add to this, that the cases are not at all similar : for Mr. Burke uses the word Parliament *throughout*, when he is speaking of the House of Commons ; without any concomitant words which convey an explanation, but the sense of his subject ; whereas Parliament is fastened upon the prisoner as meaning something beyond the House of Commons, when it can have no possible meaning beyond it ; since, from the beginning to the end, it is joined with the words *representation of the people*—the representation of the people in Parliament!—Does not this most palpably mean the House of Commons, when we know that the people have no representation in either of the other branches of the Government?

A letter has been read in evidence from Mr. Hardy to Mr. Fox, where he says their object was universal representation. Did Mr. Fox suppose, when he received this letter, that it was from a nest of republicans, clamouring publicly for an universal representative constitution like that of France? If he had, would he have sent the answer he did, and agreed to present their petition? They wrote also to the Society of the Friends of the People, and invited them to send delegates to the convention. The Attorney-General, who has made honourable and candid mention of that body, will not suppose that it would have contented itself with refusing the invitation in terms of cordiality and regard, if with all the knowledge they had of their transactions, they had conceived themselves to have been invited to the formation of a body which was to overrule and extinguish all the authorities of the State ; yet, upon the

perversion of these two terms, Parliament and Convention, against their natural interpretation, against a similar use of them by others, and against the solemn explanation of them by the Crown's own witnesses, this whole fabric of terror and accusation stands for its support. Letters, it seems, written to other people, are to be better understood by the gentlemen round this table, who never saw them till months after they were written, than by those to whom they were addressed and sent; and no right interpretation, forsooth, is to be expected from writings when pursued in their regular series, but they are to be made distinct by binding them up in a large volume, alongside of others totally unconnected with them, and the very existence of whose authors was unknown to one another.

I will now, gentlemen, resume the reading of another part of Mr. Burke, and a pretty account it is of this same Parliament: "They who will not conform their conduct to the public good, and cannot support it by the prerogative of the Crown, have adopted a new plan. They have totally abandoned the shattered and old-fashioned fortress of prerogative, and made a lodgment in the stronghold of Parliament itself. If they have any evil design to which there is no ordinary legal power commensurate, they bring it into Parliament. There the whole is executed from the beginning to the end; and the power of obtaining their object absolute; and the safety in the proceeding perfect; no rules to confine, nor after- reckonings to terrify. For Parliament cannot, with any great propriety, punish others for things in which they themselves have been accomplices. Thus its control upon the executory power is lost."

This is a proposition universal. It is not that the popular control was lost under this or that administration, but, GENERALLY, that the people have no control in the House of Commons. Let any man stand up and say that he disbelieves this to be the case; I believe he would find nobody to believe him. Mr. Burke pursues the subject thus: "The distempers of monarchy were the great subjects of apprehension and redress in the *last* century—in this the distempers of Parliament." Here the word Parliament, and the abuses belonging to it, are put in express opposition to the monarchy, and cannot therefore comprehend it; the distempers of Parliament, then, are objects of serious apprehension and redress. What distempers? Not of this or that year, but the habitual distempers of Parliament; and then follows the nature of the remedy, which shows that the prisoners are not singular in thinking that it is by THE VOICE OF THE PEOPLE ONLY that Parliament can be corrected. "It is not in Parliament alone," says Mr. Burke, "that the remedy for parliamentary disorders can be completed, and hardly indeed can it begin there. Until a confidence in Government is re-established, the people ought to be excited to a more strict and

detailed attention to the conduct of their representatives. Standards for judging more systematically upon their conduct ought to be settled in the meetings of counties and corporations, and frequent and correct lists of the voters in all important questions ought to be procured. By such means something may be done."

It was the same sense of the impossibility of a reform in Parliament, without a general expression of the wishes of the people, that dictated the Duke of Richmond's letter; all the petitions in 1780 had been rejected by Parliament; this made the Duke of Richmond exclaim, that from that quarter no redress was to be expected, and that from the people alone he expected any good; and he therefore expressly invited them to claim and to assert an equal representation as their indubitable and unalienable birthright—how to assert their rights when Parliament had already refused them without even the hope, as the Duke expressed it, of listening to them any more? Could the people's rights, under such circumstances, be asserted without rebellion? Certainly they might; for rebellion is, when bands of men within a State oppose themselves, by violence, to the general will, as expressed or implied by the public authority; but the sense of a *whole people*, peaceably collected, and operating by its natural and certain effect upon the public councils, is not rebellion, but is paramount to, and the parent of, authority itself.

Gentlemen, I am neither vindicating nor speaking the language of inflammation or discontent. I shall speak nothing that can disturb the order of the State; I am full of devotion to its dignity and tranquillity, and would not for worlds let fall an expression in this or in any other place that could lead to disturbance or disorder; but for that very reason I speak with firmness of **THE RIGHTS OF THE PEOPLE**, and am anxious for the redress of their complaints, because I believe a system of attention to them to be a far better security and establishment of every part of the Government, than those that are employed to preserve them. The State and Government of a country rest for their support on the great body of the people, and I hope never to hear it repeated, in any court of justice, that peaceably to convene the people upon the subject of their own privileges can lead to the destruction of the King. They are the King's worst enemies who hold this language. It is a most dangerous principle that the Crown is in jeopardy if the people are acquainted with their rights, and that the collecting them together to consider of them, leads inevitably to the destruction of the sovereign. Do these gentlemen mean to say that the King sits upon his throne without the consent, and in defiance of the wishes, of the great body of his people, and that he is kept upon it by a few individuals who call themselves his friends, in exclusion of the rest of his subjects? Has the King's inheritance no deeper or wider roots than this? Yes, gentlemen, it has; it stands upon the

love of the people, who consider their own inheritance to be supported by the King's constitutional authority. This is the true prop of the throne, and the love of every people upon earth will for ever uphold a Government founded as ours is upon reason and consent, as long as Government shall be itself attentive to the general interests which are the foundations and the ends of all human authority. Let us banish then these unworthy and impolitic fears of an unrestrained and an enlightened people; let us not tremble at the rights of man, but, by giving to men their rights, secure their affections, and, through their affections, their obedience; let us not broach the dangerous doctrine, that the rights of kings and of men are incompatible. Our Government at the Revolution began upon their harmonious incorporation, and Mr. Locke defended King William's title upon no other principle than the rights of man. It is from the revered work of Mr. Locke, and not from the Revolution in France, that one of the papers in the evidence, the most stigmatised, most obviously flowed; for it is proved that Mr. Yorke held in his hand "Mr. Locke upon Government," when he delivered his speech on the Castle Hill at Sheffield, and that he expatiated largely upon it. Well, indeed, might the witness say he expatiated largely, for there are many well-selected passages taken *verbatim* from the book; and here, in justice to Mr. White, let me notice the fair and honourable manner in which, in the absence of the clerk, he read this extraordinary performance. He delivered it not merely with distinctness, but in a manner so impressive, that I believe every man in court was affected by it.

Gentlemen, I am not driven to defend every expression; some of them are improper undoubtedly, rash and inflammatory, but I see nothing in the whole taken together, even if it were connected with the prisoner, that goes at all to an evil purpose in the writer. But Mr. Attorney-General has remarked upon this proceeding at Sheffield (and whatever falls from a person of his rank and just estimation deserves great attention), he has remarked that it is quite apparent they had resolved not to petition. They had certainly resolved not *at that season* to petition, and that seems the utmost which can be maintained from the evidence. But supposing they had negatived the measure altogether, is there no way by which the people may actively associate for the purposes of a reform in Parliament, but to consider of a petition to the House of Commons? Might they not legally assemble to consider the state of their liberties, and the conduct of their representatives? Might they not legally form conventions or meetings (for the name is just nothing), to adjust a plan of rational union for a wise choice of representatives when Parliament should be dissolved? May not the people meet to consider their interests preparatory to, and independently of, a petition for any specific object? My friend

seems to consider the House of Commons as a substantive and permanent part of the constitution ; he seems to forget that the Parliament dies a natural death ; that the people then re-enter into their rights, and that the exercise of them is the most important duty that can belong to social man. How are such duties to be exercised with effect, on momentous occasions, but by concert and communion ? May not the people assembled in their elective districts resolve to trust no longer those by whom they have been betrayed ? May they not resolve to vote for no man who contributed by his voice to this calamitous war, which has thrown such grievous and unnecessary burdens upon them ? May they not say, " We will not vote for those who deny we are their constituents, nor for those who question our clear and natural right to be equally represented ? " Since it is illegal to carry up petitions, and unwise to transact any public business attended by multitudes, because it tends to tumult and disorder, may they not, for that very reason, depute, as they have done, the most trusty of their societies to meet with one another to consider, without the specific object of petitions, how they may claim, by means which are constitutional, their imprescriptible rights ? And here I must advert to an argument employed by the Attorney-General, that the views of the societies towards universal suffrage, carried in themselves (however sought to be effected) an implied force upon Parliament ; for that, supposing by invading it with the vast pressure, not of the public arm, but of the public sentiment of the nation, the influence of which upon that assembly is admitted ought to be weighty, it could have prevailed upon the Commons to carry up a bill to the King for universal representation and annual Parliaments, His Majesty was bound to reject it ; and could not, without a breach of his coronation oath, consent to pass it into an act ;—I cannot conceive where my friend met with this law, or what he can possibly mean by asserting that the King cannot consistently with his coronation oath consent to any law that can be stated or imagined, presented to him as the act of the two Houses of Parliament :—he could not indeed consent to a bill sent up to him framed by a convention of delegates assuming legislative functions ; and if my friend could have proved that the societies, sitting as a parliament, had sent up such a bill to His Majesty, I should have thought the prisoner, as a member of such a parliament, was at least in a different situation from that in which he stands at present : but as this is not one of the chimeras whose existence is contended for, I return back to ask upon what authority it is maintained that universal representations and annual Parliaments could not be consented to by the King, in conformity to the wishes of the other branches of the Legislature. On the contrary, one of the greatest men that this country ever saw considered universal representation to be such an inherent part of the constitution, as that the King himself might

grant it by his prerogative, even without the Lords and Commons ; and I have never heard the position denied upon any other footing than the Union with Scotland. But, be that as it may, it is enough for my purpose that the maxim that the King might grant universal representation, as a right before inherent in the whole people to be represented, stands, upon the authority of Mr. Locke, the man, next to Sir Isaac Newton, of the greatest strength of understanding that England, perhaps, ever had ; high, too, in the favour of King William, and enjoying one of the most exalted offices in the State. Mr. Locke says, book 2d, ch. 13, sect. 157, 158—"Things of this world are in so constant a flux that nothing remains long in the same state. Thus people, riches, trade, power, change their stations, flourishing, mighty cities come to ruin, and prove in time neglected, desolate corners, whilst other unfrequented places grow into populous countries, filled with wealth and inhabitants. But things not always changing equally, and private interest often keeping up customs and privileges when the reasons of them are ceased, it often comes to pass that in governments where part of the legislative consists of *representatives* chosen by the people, that in course of time this *representation* becomes very *unequal* and disproportionate to the reasons it was at first established upon. To what gross absurdities the following of custom when reason has left it may lead, we may be satisfied when we see the bare name of a town, of which there remains not so much as the ruins, where scarce so much housing as a sheepcote, or more inhabitants than a shepherd, is to be found, sends *as many representatives* to the grand assembly of law-makers as a whole county, numerous in people and powerful in riches. This strangers stand amazed at, and every one must confess needs a remedy."

"*Salus populi suprema lex* is certainly so just and fundamental a rule, that he who sincerely follows it cannot dangerously err. If, therefore, the executive, who has the power of convoking the legislative, observing rather the true proportion than fashion of *representation*, regulates, not by old custom but true reason, the *number of members* in all places that have a right to be distinctly represented, which no part of the people, however incorporated, can pretend to, but in proportion to the assistance which it affords to the public, it cannot be judged to have set up a new legislative, but to have restored the old and true one, and to have rectified the disorders which succession of time had insensibly as well as inevitably introduced ; for it being the interest as well as intention of the people to have a fair and *equal representative*, whoever brings it nearest to that is an undoubted friend to, and establisher of the Government, and cannot miss the consent and approbation of the community ; *prerogative* being nothing but a power in the hands of the prince to provide for the public good in such cases, which depending upon unforeseen and uncertain occurrences, certain and

unalterable laws could not safely direct ; whatsoever shall be done manifestly for the good of the people, and the establishing of the Government upon its true foundations is, and always will be, just prerogative. Whatsoever cannot but be acknowledged to be of advantage to the society and people in general, upon just and lasting measures, will always when done justify itself ; and whenever the people shall choose their *representatives upon* just and undeniably *equal measures*, suitable to the original frame of the Government, it cannot be doubted to be the will and act of the society, whoever permitted or caused them so to do." But as the very idea of universal suffrage seems now to be considered not only to be dangerous to, but absolutely destructive of, monarchy, you certainly ought to be reminded that the book which I have been reading, and which my friend kindly gives me a note to remind you of, was written by its immortal author in defence of King William's title to the crown ; and when Dr. Sacheverel ventured to broach those doctrines of power and non-resistance which, under the same establishments, have now become so unaccountably popular, he was impeached by the people's representatives for denying their rights, which had been asserted and established at the glorious era of the Revolution.

Gentleman, if I were to go through all the matter which I have collected upon this subject, or which obtrudes itself upon my mind, from common reading in a thousand directions, my strength would fail long before my duty was fulfilled ; I had very little when I came into court, and I have abundantly less already ; I must, therefore, manage what remains to the best advantage. I proceed, therefore, to take a view of such parts of the evidence as appear to me to be the most material for the proper understanding of the case. I have had no opportunity of considering it but in the interval which the indulgence of the Court, and your own, has afforded me, and that has been but for a very few hours this morning ; but it occurred to me that the best use I could make of the time given to me was (if possible) to disembroil this chaos—to throw out of view everything irrelevant, which only tended to bring chaos back again—to take what remained in order of time—to select certain stages and resting-places—to review the effect of the transactions, as brought before us, and then to see how the written evidence is explained by the testimony of the witnesses who have been examined.

The origin of the Constitutional Society not having been laid in evidence before you, the first thing both in point of date, and as applying to show the objects of the different bodies, is the original address and resolution of the Corresponding Society on its first institution, and when it first began to correspond with the other, which had formerly ranked amongst its members so many illustrious persons ; and before we look to the matter of this institution, let us recollect that the objects of it were given without reserve to

the public, as containing the principles of the association; and I may begin with demanding whether the annals of this country, or indeed the universal history of mankind, afford an instance of a plot and conspiracy voluntarily given up in its very infancy to Government and the whole public, and of which, to avoid the very thing that has happened, the arraignment of conduct at a future period, and the imputation of secrecy where no secret was intended, a regular notice by letter was left with the Secretary of State, and a receipt taken at the public office as a proof of the publicity of their proceeding, and the sense they entertained of their innocence. For the views and objects of the Society we must look to the institution itself, which you are, indeed, desired to look at by the Crown; for their intentions are not considered as deceptions in this instance, but as plainly revealed by the very writing itself.

Gentlemen, there was a sort of silence in the Court—I do not say an affected one, for I mean no possible offence to any one, but there seemed to be an effect expected from beginning, not with the address itself, but with the very bold motto to it, though in verse:

“Unblest by virtue, Government a league
Becomes, a circling junto of the great
To rob by law; Religion mild, a yoke
To tame the stooping soul, a trick of state
To mask their rapine, and to share the prey.
Without it, what are senates but a face
Of consultation deep and reason free,
While the determined voice and heart are sold?
What, boasted freedom, but a sounding name?
And what election, but a market vile
Of slaves self-bartered?”

I almost fancy I heard them say to me: What think you of that to set out with? Show me the parallel of that. Gentlemen, I am sorry, for the credit of the age we live in, to answer that it is difficult to find the parallel; because the age affords no such poet as he who wrote it:—these are the words of Thomson;—and it is under the banners of his proverbial benevolence that these men are supposed to be engaging in plans of anarchy and murder; under the banners of that great and good man, whose figure you may still see in the venerable shades of Hagley, placed there by the virtuous, accomplished, and public-spirited Lyttelton: the very poem, too, written under the auspices of His Majesty's royal father, when heir-apparent to the crown of Great Britain, nay, within the very walls of Carlton House, which afforded an asylum to matchless worth and genius in the person of this great poet: it was under the roof of A PRINCE OF WALES that the poem of “LIBERTY” was written;—and what better return could be given to a prince for his protection than to blazon in immortal numbers the only sure title to the crown he was to wear—THE FREEDOM OF THE PEOPLE OF GREAT BRITAIN? And it is to be assumed, forsooth, in the year 1794, that the unfor-

fortunate prisoner before you was plotting treason and rebellion, because, with a taste and feeling beyond his humble station, his first proceeding was ushered into view under the hallowed sanction of this admirable person, the friend and the defender of the British constitution; whose countrymen are preparing at this moment (may my name descend amongst them to the latest posterity!) to do honour to his immortal memory. Pardon me, gentlemen, for this desultory digression—I must express myself as the current of my mind will carry me.

If we look at the whole of the institution itself, it exactly corresponds with the plan of the Duke of Richmond, as expressed in the letters to Colonel Sharman, and to the High Sheriff of Sussex; this plan they propose to follow, in a public address to the nation, and all their resolutions are framed for its accomplishment; and I desire to know in what they have departed from either, and what they have done which has not been done before, without blame or censure, in the pursuance of the same object. I am not speaking of the libels they may have written, which the law is open to punish, but what part of their conduct has, as applicable to the subject in question, been unprecedented. I have, at this moment, in my eye, an honourable friend of mine, and a distinguished member of the House of Commons, who, in my own remembrance, I believe in 1780, sat publicly at Guildhall, with many others, some of them magistrates of the city, as a convention of delegates, for the same objects; and, what is still more in point, just before the convention began to meet at Edinburgh, whose proceedings have been so much relied on, there was a convention regularly assembled, attended by the delegates from all the counties of Scotland, for the express and avowed purpose of altering the constitution of Parliament; not by rebellion, but by the same means employed by the prisoner. The Lord Chief Baron of Scotland sat in the chair, and was assisted by some of the first men in that country, and, amongst others, by an honourable person to whom I am nearly allied, who is at the very head of the Bar in Scotland, and most avowedly attached to the law and the constitution.* These gentlemen, whose good intentions never fell into suspicion, had presented a petition for the alteration of election laws, which the House of Commons had rejected, and on the spur of that very rejection they met in a convention at Edinburgh in 1793; and the style of their first meeting was, “A convention of delegates, chosen from the counties of Scotland, *for altering and amending the laws concerning elections*”—not for considering how they might be best amended—not for petitioning Parliament to amend them; but for altering and amending the election laws. These meetings were regularly published, and I will prove, that

* The Hon. Henry Erskine, Mr. Erskine's brother, then Dean of the Faculty of Advocates, at Edinburgh.

their first resolution, as I have read it to you, was brought up to London, and delivered to the editor of the *Morning Chronicle* by Sir Thomas Dundas, lately created a peer of Great Britain, and paid for by him as a public advertisement. Now, suppose any men had imputed treason or sedition to these honourable persons, what would have been the consequence? They would have been considered as infamous libellers and traducers, and deservedly hooted out of civilised life. Why then are different constructions to be put upon similar transactions? Why is everything to be held up as *bonâ fide* when the example is set, and *malâ fide* when it is followed? Why have I not as good a claim to take credit for honest purpose in the poor man I am defending, against whom not a contumelious expression has been proved, as when we find the same expressions in the mouths of the Duke of Richmond or Mr. Burke? I ask nothing more from this observation, than that a sober judgment may be pronounced from the quality of the acts which can be fairly established: each individual standing responsible only for his own conduct, instead of having our imaginations tainted with cant phrases, and a farrago of writings and speeches, for which the prisoner is not responsible, and for which the authors, if they be criminal, are liable to be brought to justice.

But it will be said, gentlemen, that all the constitutional privileges of the people are conceded; that their existence was never denied or invaded; and that their right to petition and to meet for the expression of their complaints, founded or unfounded, was never called in question; these, it will be said, are the rights of subjects; but that the rights of man are what alarms them: every man is considered as a traitor who talks about the rights of man; but this bugbear stands upon the same perversion with its fellows.

The rights of man are the foundation of all government, and to secure them is the only reason of men's submitting to be governed; it shall not be fastened upon the unfortunate prisoner at the bar, nor upon any other man, that because these natural rights were asserted in France, by the destruction of a Government which oppressed and subverted them, a process happily effected here by slow and imperceptible improvements, that therefore they can only be so asserted in England, where the Government, through a gradation of improvement, is well calculated to protect them. We are, fortunately, not driven in this country to the terrible alternatives which were the unhappy lot of France, because we have had a happier destiny in the forms of a free constitution: this indeed is the express language of many of the papers before you, that have been complained of; particularly in one alluded to by the Attorney-General, as having been written by a gentleman with whom I am particularly acquainted; and though in that spirited composition there are, perhaps, some expressions proceeding from

warmth which he may not desire me critically to justify, yet I will venture to affirm, from my own personal knowledge, that there is not a man in court more honestly public-spirited and zealously devoted to the constitution of King, Lords, and Commons, than the honourable gentleman I allude to (Felix Vaughan, Esq., barrister-at-law). It is the phrase, therefore, and not the sentiment expressed by it, that can alone give justifiable offence;—it is, it seems, a *new* phrase commencing in revolutions, and never used before in discussing the rights of British subjects, and therefore can only be applied in the sense of those who framed it; but this is so far from being the truth, that the very phrase sticks in my memory, from the memorable application of it to the rights of subjects, under this and every other establishment, by a gentleman whom you will not suspect of using it in any other sense. The rights of man were considered by Mr. Burke, at the time that the great uproar was made upon a supposed invasion of the East India Company's charter, to be the foundation of, and paramount to all the laws and ordinances of a State: the Ministry, you may remember, were turned out for Mr. Fox's India Bill, which their opponents termed an attack upon the chartered rights of man, or in other words, upon the abuses supported by a monopoly in trade. Hear the sentiments of Mr. Burke, when the NATURAL and CHARTERED rights of men are brought into contest. Mr. Burke, in his speech in the House of Commons, expressed himself thus: "The first objection is, that the bill is an attack on the chartered rights of men. As to this objection, I must observe that the phrase of 'the chartered rights of men,' is full of affectation; and very unusual in the discussion of privileges conferred by charters of the present description. But it is not difficult to discover what end that ambiguous mode of expression, so often reiterated, is meant to answer.

"The rights of *men*, that is to say, the *natural rights of mankind*, are indeed sacred things; and if any public measure is proved mischievously to affect them, the objection ought to be fatal to that measure, even if no charter at all could be set up against it. And if these natural rights are further affirmed and declared by express covenants, clearly defined and secured against chicane, power, and authority, by written instruments and positive engagements, they are in a still better condition; they then partake not only of the sanctity of the object so secured, but of that solemn public faith itself, which secures an object of such importance. Indeed, this formal recognition, by the sovereign power, of an original right in the subject, can never be subverted, but by rooting up the holding radical principles of government, and even of society itself."

The Duke of Richmond also, in his public letter to the High Sheriff of Sussex, rests the rights of the people of England upon the same horrible and damnable principle of the rights of man.

Let gentlemen, therefore, take care they do not pull down the very authority which they come here to support; let them remember, that His Majesty's family was called to the throne upon the very principle that the ancient kings of this country had violated these sacred trusts; let them recollect too in what the violation was charged to exist; it was charged by the Bill of Rights to exist in cruel and infamous trials; in the packing of juries; and in disarming the people, whose arms are their unalienable refuge against oppression. But did the people of England assemble to make this declaration? No!—because it was unnecessary. The sense of the people, against a corrupt and scandalous Government, dissolved it, by almost the ordinary forms by which the old Government itself was administered. King William sent his writs to those who had sat in the former Parliament: but will any man, therefore, tell me that that Parliament reorganised the Government without the will of the people? and that it was not their consent which entailed on King William a particular inheritance, to be enjoyed under the dominion of the law? Gentlemen, it was the denial of these principles, asserted at the Revolution in England, that brought forward the author of "*The Rights of Man*," and stirred up this controversy which has given such alarm to Government: but for this the literary labours of Mr. Paine had closed. He asserts it himself in his book, and everybody knows it. It was not the French Revolution, but Mr. Burke's reflections upon it, followed up by another work on the same subject, *as it regarded things in England*, which brought forward Mr. Paine, and which rendered his works so much the object of attention in this country. Mr. Burke denied positively the very foundation upon which the Revolution of 1688 must stand for its support, viz., the right of the people to change their Government; and he asserted, in the teeth of His Majesty's title to the crown, that no such right in the people existed; this is the true history of the second part of "*The Rights of Man*." The first part had little more aspect to this country than to Japan; it asserted the right of the people of France to act as they had acted, but there was little which pointed to it as an example for England. There had been a despotic authority in France which the people had thrown down, and Mr. Burke seemed to question their right to do so: Mr. Paine maintained the contrary in his answer; and having imbibed the principles of republican government, during the American Revolution, he mixed with the controversy many coarse and harsh remarks upon monarchy as established, even in England, or in any possible form. But this was collateral to the great object of his work, which was to maintain the right of the people to choose their Government; this was the right which was questioned, and the assertion of it was most interesting to many who were most strenuously attached to the English Government. For men may assert the right of every people to choose their Govern-

ment without seeking to destroy their own. This accounts for many expressions imputed to the unfortunate prisoners, which I have often uttered myself, and shall continue to utter every day of my life, and call upon the spies of Government to record them. *I will say anywhere, without fear, nay, I will say here, where I stand, that an attempt to interfere, by despotic combination and violence, with any Government which a people choose to give to themselves, whether it be good or evil, is an oppression and subversion of the natural and unalienable rights of man ; and though the Government of this country should countenance such a system, it would not only be still legal for me to express my detestation of it, as I here deliberately express it, but it would become my interest and my duty. For, if combinations of despotism can accomplish such a purpose, who shall tell me, what other nation shall not be the prey of their ambition ?* Upon the very principle of denying to a people the right of governing themselves, how are we to resist the French, should they attempt by violence to fasten their government upon us ? Or what inducement would there be for resistance to preserve laws, which are not, it seems, our own, but which are unalterably imposed upon us ? The very argument strikes, as with a palsy, the arm and vigour of the nation. I hold dear the privileges I am contending for, not as privileges hostile to the constitution, but as necessary for its preservation ; and if the French were to intrude by force upon the Government of our own free choice, I should leave these papers, and return to a profession that, perhaps, I better understand.

The next evidence relied on, after the institution of the Corresponding Society, is a letter written to them from Norwich, dated the 11th of November 1792, with the answer, dated the 26th of the same month :—it is asserted, that this correspondence shows, they aimed at nothing less than the total destruction of the monarchy, and that they, therefore, veil their intention under covert and ambiguous language. I think, on the other hand, and I shall continue to think so as long as I am capable of thought, that it was impossible for words to convey more clearly the explicit avowal of their original plan for a constitutional reform in the House of Commons. This letter from Norwich, after congratulating the Corresponding Society on its institution, asks several questions arising out of the proceedings of other societies in different parts of the kingdom, which they profess not thoroughly to understand.

The Sheffield people (they observe) seemed at first determined to support the Duke of Richmond's plan only, but that they had afterwards observed a disposition in them to a more moderate plan of reform proposed by the Friends of the People in London ; whilst the Manchester people, by addressing Mr. Paine (whom the Norwich people had not addressed), seemed to be intent on republican princi-

ples only. They therefore put a question, not at all of distrust, or suspicion, but *bona fide*, if ever there was good faith between men, whether the Corresponding Society meant to be satisfied with the plan of the Duke of Richmond? or, whether it was their private design to rip up monarchy by the roots, and place democracy in its stead? Now hear the answer, from whence it is inferred that this last is their intention: they begin their answer with recapitulating the demand of their correspondent, as regularly as a tradesman who has had an order for goods recapitulates the order, that there may be no ambiguity in the reference or application of the reply, and then they say, as to the objects they have in view they refer them to their addresses. "You will thereby see that they mean to disseminate political knowledge, and thereby engage the judicious part of the nation to demand the RECOVERY of their LOST rights in ANNUAL Parliaments; the members of these Parliaments owing their election to unbought suffrages." They then desire them to be careful to avoid all dispute, and say to them, Put monarchy, democracy, and even religion, quite aside; and "Let your endeavours go to increase the numbers of those who desire a full and equal representation of the people, and leave to a Parliament, so chosen, to reform all existing abuses; and if they don't answer, at the year's end, you may choose others in their stead." The Attorney-General says this is lamely expressed;—I, on the other hand, say that it is not only not lamely expressed, but anxiously worded to put an end to dangerous speculations. Leave all theories undiscussed; do not perplex yourselves with abstract questions of government; endeavour practically to get honest representatives,—and if they deceive you—then, what?—bring on a revolution? No! Choose others in their stead. They refer also to their address, which lay before their correspondent, which address expresses itself thus: "Laying aside all claim to originality, we claim no other merit than that of reconsidering and verifying what has already been urged in our common cause by the Duke of Richmond and Mr. Pitt, and their then honest party."

When the language of the letter, which is branded as ambiguous, thus stares them in the face as an undeniable answer to the charge, they then have recourse to the old refuge of *mala fides*; all this they say is but a cover for hidden treason. But I ask you, gentlemen, in the name of God, and as fair and honest men, what reason upon earth there is to suppose that the writers of this letter did not mean what they expressed? Are you to presume in a court of justice, and upon a trial for life, that men write with duplicity in their most confidential correspondence, even to those with whom they are confederated? Let it be recollected also, that if this correspondence was calculated for deception, the deception must have been understood and agreed upon by all parties concerned; for otherwise you have a conspiracy amongst persons who are at cross purposes

with one another: consequently the conspiracy, if this be a branch of it, is a conspiracy of thousands and ten thousands, from one end of the kingdom to the other, who are all guilty, if any of the prisoners are guilty:—upwards of forty thousand persons, upon the lowest calculation, must alike be liable to the pains and penalties of the law, and hold their lives as tenants at will of the Ministers of the Crown. In whatever aspect, therefore, this prosecution is regarded, new difficulties and new uncertainties and terrors surround it.

The next thing in order which we have to look at, is the convention at Edinburgh. It appears that a letter had been written by Mr. Skirving, who was connected with reformers in Scotland proceeding avowedly upon the Duke of Richmond's plan, proposing that there should be a convention from the societies assembled at Edinburgh. Now you will recollect, in the opening, that the Attorney-General considered all the great original sin of this conspiracy and treason to have originated with the societies in London—that the country societies were only tools in their hands, and that the Edinburgh convention was the commencement of their projects; and yet it plainly appears that this convention originated from neither of the London societies, but had its beginning at Edinburgh, where, just before, a convention had been sitting for the reform in Parliament, attended by the principal persons in Scotland; and surely, without adverting to the nationality so peculiar to the people of that country, it is not at all suspicious, that since they were to hold a meeting for similar objects, they should make use of the same style for their association; and that their deputies should be called delegates, when delegates had attended the other convention from all the counties, and whom they were every day looking at in their streets, in the course of the very same year that Skirving wrote his letter on the subject. The views of the Corresponding Society, as they regarded this convention, and consequently the views of the prisoner, must be collected from the written instructions to the delegates, unless they can be falsified by matter which is collateral. If I constitute an agent, I am bound by what he does, but always with this limitation, for what he does *within the scope of his agency*. If I constitute an agent to buy horses for me, and he commits high treason, it will not, I hope, be argued that I am to be hanged. If I constitute an agent for any business that can be stated, and he goes beyond his instructions, he must answer for himself beyond their limits; for beyond them he is not my representative. The acts done, therefore, at the Scotch convention, whatever may be their quality, are evidence to show, that in point of fact, a certain number of people got together, and did anything you choose to call illegal; but as far as it concerns me, if I am not present, you are limited by my instructions, and have not advanced a single step upon your journey to convict me: the instruc-

tions to Skirving have been read, and speak for themselves; they are strictly legal, and pursue the avowed object of the society; and it will be for the Solicitor-General to point out, in his reply, any counter or secret instructions, or any collateral conduct, contradictory of the good faith with which they were written. The instructions are in these words—"The delegates are instructed, on the part of this Society, to assist in bringing forward and supporting any *constitutional* measure for procuring a real representation of the Commons of Great Britain." What do you say, gentlemen, to this language?—how are men to express themselves who desire a constitutional reform? The object and the mode of effecting it were equally legal. This is most obvious from the conduct of the Parliament of Ireland, acting under directions from England; they passed the Convention Bill, and made it only a misdemeanour, knowing that, by the law as it stood, it was no misdemeanour at all. Whether this statement may meet with the approbation of others, I care not; I know the fact to be so, and I maintain that you cannot prove upon the convention which met at Edinburgh, and which is charged to-day with high treason, one thousandth part of what, at last, worked up government in Ireland, to the pitch of voting it a misdemeanour.

Gentlemen, I am not vindicating anything that can promote disorder in the country, but I am maintaining that the worst possible disorder that can fall upon a country is, when subjects are deprived of the sanction of clear and unambiguous laws. If wrong is committed, let punishment follow according to the measure of that wrong: if men are turbulent, let them be visited by the laws according to the measure of their turbulency: if they write libels upon Government, let them be punished according to the quality of those libels; but you must not, and will not, because the stability of the monarchy is an important concern to the nation, confound the nature and distinctions of crimes, and pronounce that the life of the sovereign has been invaded, because the privileges of the people have been, perhaps, irregularly and hotly asserted. You will not, to give security to Government, repeal the most sacred laws instituted for our protection, and which are, indeed, the only consideration for our submitting at all to Government. If the plain letter of the statute of Edward the Third applies to the conduct of the prisoners, let it, in God's name, be applied; but let neither their conduct, nor the law that is to judge it, be tortured by construction; nor suffer the transaction, from whence you are to form a dispassionate conclusion of intention, to be magnified by scandalous epithets, nor overwhelmed in an undistinguishable mass of matter, in which you may be lost and bewildered, having missed the only parts which could have furnished a clue to a just or rational judgment.

Gentlemen, this religious regard for the liberty of the subject

against constructive treason, is well illustrated by Dr. Johnson, the great author of our English Dictionary, a man remarkable for his love of order, and for high principles of government, but who had the wisdom to know that the great end of government, in all its forms, is the security of liberty and life under the law. This man, of masculine mind, though disgusted at the disorder which Lord George Gordon created, felt a triumph in his acquittal, and exclaimed, as we learn from Mr. Boswell, "I hate Lord G. Gordon, but I am glad he was not convicted of this constructive treason; for, though I hate him, I love my country and myself." This extraordinary man, no doubt, remembered, with Lord Hale, that, when the law is broken down, injustice knows no bounds, but runs as far as the wit and invention of accusers, or the detestation of persons accused, will carry it. You will pardon this almost perpetual recurrence to these considerations: but the present is a season when I have a right to call upon you by everything sacred in humanity and justice—by every principle which ought to influence the heart of man—to consider the situation in which I stand before you. I stand here for a poor, unknown, unprotected individual, charged with a design to subvert the Government of the country, and the dearest rights of its inhabitants; a charge which has collected against him a force sufficient to crush to pieces any private man. The whole weight of the Crown presses upon him; Parliament has been sitting upon *ex parte* evidence for months together; and rank and property is associated, from one end of the kingdom to the other, to avert the supposed consequences of the treason. I am making no complaint of this; but surely it is an awful summons to impartial attention; surely it excuses me for so often calling upon your integrity and firmness to do equal justice between the Crown, so supported, and an unhappy prisoner, so unprotected.

Gentlemen, I declare that I am utterly astonished, on looking at the clock, to find how long I have been speaking, and that, agitated and distressed as I am, I have yet strength enough remaining for the remainder of my duty. At every peril of my health it shall be exerted: for although, if this cause should miscarry, I know I shall have justice done me for the honesty of my intentions; yet what is that to the public and posterity? What is it to them, when, if upon this evidence there can stand a conviction for high treason, it is plain that no man can be said to have a life which is his own? For how can he possibly know by what engines it may be snared, or from what unknown sources it may be attacked and overpowered? Such a monstrous precedent would be as ruinous to the King as to his subjects. We are in a crisis of our affairs, which, putting justice out of the question, calls in sound policy for the greatest prudence and moderation. At a time when other nations are disposed to subvert *their* establishments, let it be our wisdom to make

the subject feel the practical benefits of *our own* : let us seek to bring good out of evil. The distracted inhabitants of the world will fly to us for sanctuary, driven out of their countries from the dreadful consequences of not attending to seasonable reforms in government—victims to the folly of suffering corruptions to continue till the whole fabric of society is dissolved and tumbles into ruin. Landing upon our shores, they will feel the blessing of security, and they will discover in what it consists : they will read this trial, and their hearts will palpitate at your decision : they will say to one another, and their voices will reach to the ends of the earth, May the constitution of England endure for ever!—the sacred and yet remaining sanctuary for the oppressed. Here, and here only, the lot of man is cast in security : what though authority, established for the ends of justice, may lift itself up against it ; what though the House of Commons itself should make an *ex parte* declaration of guilt ; what though every species of art should be employed to entangle the opinions of the people, which in other countries would be inevitable destruction ; yet in England, in enlightened England, all this will not pluck a hair from the head of innocence ; the jury will still look steadfastly to the law, as the great polar star to direct them in their course. As prudent men they will set no example of disorder, nor pronounce a verdict of censure on authority, or of approbation or disapprobation, beyond their judicial province ; but, on the other hand, they will make no political sacrifice, but deliver a plain, honest man from the toils of injustice. When your verdict is pronounced, this will be the judgment of the world ; and if any amongst ourselves are alienated in their affections to Government, nothing will be so likely to reclaim them : they will say, Whatever we have lost of our control in Parliament, we have yet a sheet-anchor remaining to hold the vessel of the State amidst contending storms ; we have still, thank God, a sound administration of justice secured to us, in the independence of the judges, in the rights of enlightened juries, and in the integrity of the Bar,—ready at all times, and upon every possible occasion, whatever may be the consequences to themselves, to stand forward in defence of the meanest man in England, when brought for judgment before the laws of the country.

To return to this Scotch convention. Their papers were all seized by Government. What their proceedings were they best know : we can only see what parts they choose to show us ; but, from what we have seen, does any man seriously believe that this meeting at Edlinburgh meant to assume and to maintain by force all the functions and authorities of the State ? Is the thing within the compass of human belief ? If a man were offered a dukedom, and twenty thousand pounds a year, for trying to believe it, he might say he believed it, as what will not man say for gold and honours ? but he never in fact could believe that this Edinburgli

meeting was a Parliament for Great Britain. How indeed could he, from the proceedings of a few peaceable, unarmed men, discussing, in a constitutional manner, the means of obtaining a reform in Parliament, and who, to maintain the club, or whatever you choose to call it, collected a little money from people who were well disposed to the cause; a few shillings one day, and perhaps as many pence another? I think, as far as I could reckon it up, when the report from this great committee of supply was read to you, I counted that there had been raised, in the first session of this Parliament, fifteen pounds, from which indeed you must deduct two bad shillings, which are literally noticed in the account. Is it to be endured, gentlemen, that men should gravely say that this body assumed to itself the offices of Parliament?—that a few harmless people, who sat, as they profess, to obtain a full representation of the people, were themselves, even in their own imaginations, the complete representation which they sought for? Why should they sit from day to day to consider how they might obtain what they had already got? If their object was an universal representation of the whole people, how is it credible they could suppose that universal representation to exist in themselves—in the representatives of a few societies instituted to obtain it for the country at large? If they were themselves the nation, why should the language of every resolution be, that reason ought to be their grand engine for the accomplishment of their object, and should be directed to convince the nation to speak to Parliament in a voice that must be heard? The proposition, therefore, is too gross to cram down the throats of the English people, and this is the prisoner's security. Here again he feels the advantage of our free administration of justice: this proposition, on which so much depends, is not to be reasoned upon on parchment, to be delivered privately to magistrates for private judgment. No, he has the privilege of appealing aloud, as he now appeals by me, to an enlightened assembly, full of eyes, and ears, and intelligence, where speaking to a jury is, in a manner, speaking to a nation at large, and flying for sanctuary to its universal justice.

Gentlemen, the very work of Mr. Paine, under the banners of which this supposed rebellion was set on foot, refutes the charge it is brought forward to support; for Mr. Paine, in his preface, and throughout his whole book, reprobates the use of force against the most evil governments; the contrary was never imputed to him. If his book had been written in pursuance of the design of force and rebellion, with which it is now sought to be connected, he would, like the prisoners, have been charged with an overt act of high treason; but such a proceeding was never thought of. Mr. Paine was indicted for a misdemeanour, and the misdemeanour was argued to consist not in the falsehood that a nation has no right to choose or alter its government, but in seditiously exciting

the nation, without cause, to exercise that right. A learned Lord (Lord Chief-Baron Macdonald), now on this Bench, addressed the jury as Attorney-General upon this principle ; his language was this : 'The question is not what the people have a right to do, for the people are undoubtedly the foundation and origin of all government, but the charge is, for seditiously calling upon the people, without cause or reason, to exercise a right which would be sedition, supposing the right to be in them ; for though the people might have a right to do the thing suggested, and though they are not excited to the doing it by force and rebellion, yet as the suggestion goes to unsettle the State, the propagation of such doctrine is seditious. There is no other way undoubtedly of describing that charge. I am not here entering into the application of it to Mr. Paine, whose counsel I was, and who has been tried already. To say that the people have a right to change their Government, is indeed a truism ; everybody knows it, and they exercised the right, otherwise the King could not have had his establishment amongst us. If, therefore, I stir up individuals to oppose by force the general will, seated in the Government, it may be treason ; but to induce changes in a Government, by exposing to a whole nation its errors and imperfections, can have no bearing upon such an offence ; the utmost which can be made of it is a misdemeanour, and that too depending wholly upon the judgment which the jury may form of the intention of the writer. The courts for a long time indeed assumed to themselves the province of deciding upon this intention as a matter of law, conclusively inferring it from the act of publication : I say the courts *assumed* it, though it was not the doctrine of Lord Mansfield, but handed down to him from the precedents of judges before his time. But even in that case, though the publication was the crime, not, as in this case, the intention, and though the quality of the thing charged, when not rebutted by evidence for the defendant, had so long been considered to be a legal inference, yet the Legislature, to support the province of the jury, and in tenderness for liberty, has lately altered the law upon this important subject. If, therefore, we were not assembled, as we are, to consider of the existence of high treason against the King's life, but only of a misdemeanour for seditiously disturbing his title and establishment, by the proceedings for a reform in Parliament, I should think the Crown, upon the very principle which, under the libel law, must now govern such a trial, quite as distant from its mark ; because in my opinion, there is no way by which His Majesty's title can more firmly be secured, or by which (above all, in our times) its permanency can be better established, than by promoting a more full and equal representation of the people by peaceable means ; and by what other means has it been sought, in this instance, to be promoted ?

Gentlemen, when the members of this convention were seized,

did they attempt resistance? Did they insist upon their privileges as subjects under the laws, or as a Parliament enacting laws for others? If they had said or done anything to give colour to such an idea, there needed no spies to convict them: the Crown could have given ample indemnity for evidence from amongst themselves. The societies consisted of thousands and thousands of persons, some of whom, upon any calculation of human nature, might have been produced: the delegates who attended the meetings could not be supposed to have met with a different intention from those who sent them; and if the answer to that is, that the constituents are involved in the guilt of their representatives, we get back to the monstrous position *which I observed you before to shrink back from with visible horror when I stated it*—namely, the involving in the fate and consequence of this single trial every man who corresponded with these societies, or who as a member of societies in any part of the kingdom, consented to the meeting which was assembled, or which was in prospect; but, I thank God, I have nothing to fear from such hydras, when I see before me such just and honourable men to hold the balance of justice.

Gentlemen, the dissolution of this parliament speaks as strong a language as its conduct when sitting. How was it dissolved? When the magistrates entered, Mr. Skirving was in the chair, which he refused to leave; he considered and asserted his conduct to be legal, and therefore informed the magistrate he must exercise his authority, that the dispersion might appear to be involuntary, and that the subject, disturbed in his rights, might be entitled to his remedy. The magistrate on this took Mr. Skirving by the shoulder, who immediately obeyed; the chair was quitted in a moment, and this great parliament broke up. What was the effect of all this proceeding at the time, when whatever belonged to it must have been best understood? Were any of the parties indicted for high treason? Were they indicted even for a breach of the peace in holding the convention? None of these things. The law of Scotland, arbitrary as it is, was to be disturbed to find a name for their offence, and the rules of trial to be violated to convict them; they were denied their challenges to their jurors, and other irregularities were introduced, so as to be the subject of complaint in the House of Commons. Gentlemen, in what I am saying, I am not standing up to vindicate all that they published during these proceedings, more especially those which were written in consequence of the trials I have just alluded to; but allowance must be made for a state of heat and irritation. They saw men whom they believed to be persecuted for what they believed to be innocent; they saw them the victims of sentences which many would consider as equivalent to, if not worse than, judgment of treason,—sentences which, at all events, had never existed before, and such as, I believe, never will again with

impunity. But since I am on the subject of *intention*, I shall conduct myself with the same moderation which I have been prescribing; I will cast no aspersions, but shall content myself with lamenting that these judgments were productive of consequences which rarely follow from authority discreetly exercised. How easy is it then to dispose of as much of the evidence as consumed half a day in the anathemas against the Scotch judges! It appears that they came to various resolutions concerning them; some good, some bad, and all of them irregular. Amongst others they compare them to Jefferies, and wish that they who imitate his example may meet his fate. What then? Irreverent expressions against judges are not acts of high treason! If they had assembled round the Courts of Justiciary, and hanged them in the execution of their offices, it would not have been treason within the statute. I am no advocate for disrespect of judges, and think that it is dangerous to the public order; but, putting aside the insult upon the judges now in authority, the reprobation of Jefferies is no libel, but an awful and useful memento to wicked men. Lord Chief-Justice Jefferies denied the privilege of English law to an innocent man. He refused it to Sir Thomas Armstrong, who in vain pleaded, in bar of his outlawry, that he was out of the realm when he was exacted—(an objection so clear, that it was lately taken for granted, in the case of Mr. Purefoy). The daughter of this unfortunate person, a lady of honour and quality, came publicly into court to supplicate for her father; and what were the effects of her supplications and of the law in the mouth of the prisoner? “Sir Thomas Armstrong,” said Jefferies, “you may amuse yourself as much as you please with the idea of your innocence, but you are to be hanged next Friday,” and upon the natural exclamation of a daughter at this horrible outrage against her parent, he said, “Take that woman out of court,” which she answered by a prayer that God Almighty’s judgments might light upon him. Gentlemen, they did light upon him; and when after his death, which speedily followed this transaction, the matter was brought before the House of Commons, under that glorious revolution which is asserted throughout the proceedings before you, the judgment against Sir Thomas Armstrong was declared to be a murder under colour of justice! Sir Robert Sawyer, the Attorney-General, was expelled the House of Commons for his misdemeanour in refusing the writ of error, and the executors of Jefferies were commanded to make compensation to the widow and the daughter of the deceased. These are great monuments of justice; and although I by no means approve of harsh expressions against authority, which tend to weaken the holdings of society, yet let us not go beyond the mark in our restraints, nor suppose that men are dangerously disaffected to the Government, because they feel a sort of pride and exultation in events which constitute the dignity and glory of their country.

Gentlemen, this resentment against the proceedings of the Courts in Scotland was not confined to those who were the objects of them—it was not confined even to the friends of a reform in Parliament. A benevolent public, in both parts of the island, joined them in the complaint, and a gentleman of great moderation, and a most inveterate enemy to parliamentary reform, as thinking it not an improvement of the Government, but nevertheless a lover of his country and its insulted justice, made the convictions of the delegates the subject of a public inquiry. I speak of my friend, Mr. William Adam, who brought these judgments of the Scotch judges before the House of Commons—arraigned them as contrary to law, and proposed to reverse them by the authority of Parliament. Let it not, then, be matter of wonder that these poor men who were the immediate victims of this injustice, and who saw their brethren expelled from their country by an unprecedented and questionable judgment, should feel like men on the subject, and express themselves as they felt.

Gentlemen, amidst the various distresses and embarrassments which attend my present situation, it is a great consolation that I have marked from the beginning your vigilant attention and your capacity to understand; it is, therefore, with the utmost confidence that I ask you a few plain questions, arising out of the whole of these Scotch proceedings. In the first place then, do you believe it to be possible that, if these men had really projected the convention as a traitorous usurpation of the authorities of Parliament, they would have invited the Friends of the People, in Firth Street, to assist them, when they knew that this society was determined not to seek the reform of the constitution but by means that were constitutional, and from whom they could neither hope for support nor concealment of evil purposes? I ask you next, if their objects had been traitorous, would they have given them, without disguise or colour, to the public and to the Government, in every common newspaper? And yet it is so far from being a charge against them, that they concealed their objects by hypocrisy or guarded conduct, that I have been driven to admit the justice of the complaint against them for unnecessary inflammation and exaggeration. I ask you further, whether, if the proceedings thus published and exaggerated, had appeared to Government, who knew everything belonging to them, in the light they represent them to you *to-day*, they could possibly have slept over them with such complete indifference and silence? For it is notorious that after this convention had been held at Edinburgh, after, in short, everything had been said, written, and transacted, on which I am now commenting, and after Mr. Paine's book had been for above a year in universal circulation,—ay, up to the very day when Mr. Grey gave notice in the House of Commons of the intention of the Friends of the People for a reform in Parliament, there was not even a single

indictment on the file for a misdemeanour ; but from that moment, when it was seen that the cause was not beat down nor abandoned, the proclamation made its appearance, and all the proceedings that followed had their birth. I ask you lastly, gentlemen, whether it be in human nature that a few unprotected men, conscious in their own minds that they had been engaged and detected in a detestable rebellion to cut off the King, to destroy the administration of justice, and to subvert the whole fabric of the Government, should turn round upon their country whose ruin they had projected, and whose most obvious justice attached on them, complaining, forsooth, that their delegates, taken by magistrates in the very act of high treason, had been harshly and illegally interrupted in a meritorious proceeding ? The history of mankind never furnished an instance, nor ever will, of such extravagant, preposterous, and unnatural conduct ! No, no, gentlemen ; all their hot blood was owing to their firm persuasion, dictated by conscious innocence, that the conduct of their delegates had been legal, and might be vindicated against the magistrates who obstructed them. In that they might be mistaken. I am not arguing that point at present ; if they are hereafter indicted for a misdemeanour, and I am counsel in that cause, I will then tell you what I think of it : sufficient for the day is the good or evil of it,—it is sufficient for the present one that the legality or illegality of the business has no relation to the crime that is imputed to the prisoner.

The next matter that is alleged against the authors of the Scotch convention and the societies which supported it, is their having sent addresses of friendship to the convention of France. These addresses are considered to be a decisive proof of republican combination, verging closely in themselves upon an overt act of treason. Gentlemen, if the dates of these addresses are attended to, which come no lower down than November 1792, we have only to lament that they are but the acts of private subjects, and that they were not sanctioned by the State itself. The French nation, about that period, under their new constitution, or under their new anarchy, call it which you will, were nevertheless most anxiously desirous of maintaining peace with this country. But the King was advised to withdraw his ambassador from France, upon the approaching catastrophe of its most unfortunate prince ; an event which, however to be deplored, was no justifiable cause of offence to Great Britain. France desired nothing but the regeneration of her own government ; and if she mistook the road to her prosperity, what was that to us ? But it was alleged against her in Parliament that she had introduced spies amongst us, and held correspondence with disaffected persons for the destruction of our constitution, This was the charge of our Minister, and it was, therefore, held to be just and necessary for the safety of the country to hold France at arm's length, and to avoid the very contagion of contact with her at the

risk of war. But, gentlemen, this charge against France was thought by many to be supported by no better proofs than those against the prisoner. In the public correspondence of the ambassador from the French King, and upon his death, as Minister from the convention, with His Majesty's Secretary of State, documents, which lie upon the table of the House of Commons, and which may be made evidence in the cause, the executive council repelled with indignation all the imputations, which to this very hour are held out as the vindications of quarrel. "If there be such persons in England," says Monsieur Chauvelin, "has not England laws to punish them? France disavows them—such men are not Frenchmen." The same correspondence conveys the most solemn assurances of friendship down to the very end of the year 1792, a period subsequent to all the correspondence and addresses complained of. Whether these assurances were faithful or otherwise, whether it would have been prudent to have depended on them or otherwise, whether the war was advisable or unadvisable, are questions over which we have no jurisdiction. I only desire to bring to your recollection that a man may be a friend to the rights of humanity, and to the imprescriptible rights of social man, which is now a term of derision and contempt—that he may feel to the very soul for a nation beset by the sword of despots, and yet be a lover of his own country and its constitution.

Gentlemen, the same celebrated person of whom I have had occasion to speak so frequently, is the best and brightest illustration of this truth. Mr. Burke, indeed, went a great deal further than requires to be pressed into the present argument; for he maintained the cause of justice and of truth against all the perverted authority and rash violence of his country, and expressed the feelings of a Christian and a patriot in the very heat of the American war, boldly holding forth our victories as defeats, and our successes as calamities and disgraces. "It is not instantly," said Mr. Burke, "that I can be brought to rejoice, when I hear of the slaughter and captivity of long lists of those names which have been familiar to my ears from my infancy, and to rejoice that they have fallen under the sword of strangers, whose barbarous appellations I scarcely know how to pronounce. The glory acquired at the *White Plains* by Colonel *Raile* has no charms for me; and I fairly acknowledge that I have not yet learned to delight in finding *Fort Kniphausen* in the heart of the British dominions." If this had been said or written by Mr. Yorke at Sheffield, or by any other member of these societies, heated with wine at the Globe Tavern, it would have been trumpeted forth as decisive evidence of a rebellious spirit rejoicing in the downfall of his country; yet the great author whose writings I have borrowed from, approved himself to be the friend of this nation at that calamitous crisis, and had it pleased God to open the understandings of our rulers, his wisdom might have averted

the storms that are now thickening around us. We must not, therefore, be too severe in our strictures upon the opinions and feelings of men as they regard such mighty public questions. The interests of a nation may often be one thing, and the interests of its Government another; but the interests of those who hold government for the hour is at all times different from either. At the time many of the papers before you were circulated on the subject of the war with France, many of the best and wisest men in this kingdom began to be driven by our situation to these melancholy reflections, and thousands of persons, the most firmly attached to the principles of our constitution, and who never were members of any of these societies, considered, and still consider, Great Britain as the aggressor against France; they considered, and still consider, that she had a right to choose a Government for herself, and that it was contrary to the first principles of justice, and if possible, still more repugnant to the genius of our own free constitution, to combine with despots for her destruction; and who knows but that the external pressure upon France may have been the cause of that unheard-of state of society which we complain of? Who knows but that driven as she has been to exertions beyond the ordinary vigour of a nation, it has not been the parent of that unnatural and giant strength which threatens the authors of it with perdition? These are melancholy considerations, but they may reasonably, and at all events, be lawfully entertained. We owe obedience to Government in our *actions*, but surely our *opinions* are free.

Gentlemen, pursuing the order of time, we are arrived at length at the proposition to hold *another convention, which, with the support of it by force, are the only overt acts of high treason charged upon this record*. For strange as it may appear, there is no charge whatever before you of any one of those acts or writings, the evidence of which consumed so many days in reading, and which has already nearly consumed my strength in only passing them in review before you. If every line and letter of all the writings I have been commenting upon were admitted to be traitorous machinations, and if the convention in Scotland was an open rebellion, it is conceded to be foreign to the present purpose, unless as such criminality in them might show the views and objects of the persons engaged in them. On that principle only the court has over and over again decided the evidence of them to be admissible; and on the same principle I have illustrated them in their order as they happened, that I might lead the prisoner in your view up to the very point and moment when the treason is supposed to have burst forth into the overt act for which he is arraigned before you.

The transaction respecting this second convention, which constitutes the principal, or more properly the only overt act in the

indictment, lies in the narrowest compass, and is clouded with no ambiguity. I admit freely every act which is imputed to the prisoner, and listen not so much with fear as with curiosity and wonder, to the treason sought to be connected with it.

You will recollect that the first motion towards the holding of a second convention originated in a letter to the prisoner from a country correspondent, in which the legality of the former was vindicated, and its dispersion lamented. This letter was answered on the 27th of March 1794, and was read to you in the Crown's evidence in these words:—

“CITIZEN,—

March 27, 1794

“I am directed by the London Corresponding Society to transmit the following resolutions to the Society for Constitutional Information, and to request the sentiments of that society respecting the important measures which the present juncture of affairs seems to require.

“The London Corresponding Society conceives that the moment is arrived when a full and explicit declaration is necessary from all the friends of freedom—whether the late *illegal and unheard-of prosecutions and sentences* shall determine us to abandon our cause, or shall excite us to pursue a radical reform with an ardour proportioned to the magnitude of the object, and with a zeal as *distinguished on our parts as the treachery of others in the same glorious cause is notorious*. The Society for Constitutional Information is therefore required to determine whether or no they will be ready when called upon to act in conjunction with *this and other societies to obtain a fair representation of the PEOPLE—whether they concur with us in seeing the necessity of a speedy convention for the purpose of obtaining, in a constitutional and legal method, a redress of those grievances under which we at present labour, and which can only be effectually removed by a full and fair representation of the people of Great Britain*. The London Corresponding Society cannot but remind their friends that the present crisis demands all the prudence, unanimity, and vigour that may or can be exerted by MEN and Britons; nor do they doubt but that manly firmness and consistency will finally, and they believe shortly, terminate in the full accomplishment of all their wishes.

“I am, Fellow-citizen

“ (In my humble measure)

“A friend to the Rights of Man,

“ (Signed)

T. HARDY, Secretary.”

They then resolve that there is no security for the continuance of any right but in equality of *laws*—not in equality of *property*, the ridiculous bugbear by which you are to be frightened into injustice. On the contrary, throughout every part of the proceedings, and most emphatically in Mr. Yorke's speech, so much relied on, the

beneficial subordinations of society, the security of property, and the prosperity of the landed and commercial interests, are held forth as the very objects to be attained by the reform in the representation which they sought for.

In examining this first moving towards a second convention, the first thing to be considered is what reason there is, from the letter I have just read to you, or from anything that appears to have led to it, to suppose that a *different sort* of convention was projected from that which had been before assembled and dispersed. The letter says *another* British convention; and it describes the same objects as the first—compare all the papers for the calling this second convention with those for assembling the first, and you will find no difference, except that they mixed with them extraneous and libellous matter, arising obviously from the irritation produced by the sailing of the transports with their brethren condemned to exile. These papers have already been considered, and separated, as they ought to be, from the charge.

I will now lay before you all the remaining operations of this formidable conspiracy up to the prisoner's imprisonment in the Tower. Mr. Hardy having received the letter just adverted to, regarding a second convention, the Corresponding Society wrote the letter of the 27th of March, and which was found in his handwriting, and is published in the first report, page 11. This letter, enclosing the resolutions they had come to upon the subject, was considered by the Constitutional Society on the next day, the 28th of March, the ordinary day for their meeting, when they sent an answer to the Corresponding Society, informing them that they had received their communication, that they heartily concurred with them in the objects they had in view, and invited them to send a delegation of their members to confer with them on the subject.

Now, what were the objects they concurred in, and what was to be the subject of conference between the societies by their delegates? Look at the letter, which distinctly expresses its objects, and the means by which they sought to effect them. Had these poor men (too numerous to meet all together, and therefore renewing the cause of parliamentary reform by delegation from the societies) any reason to suppose that they were involving themselves in the pains of treason, and that they were compassing the King's death, when they were redeeming (as they thought) his authority from probable downfall and ruin? Had treason been imputed to the delegates before? Had the imagining the death of the King ever been suspected by anybody? Or when they were prosecuted for misdemeanours, was the prosecution considered as an indulgence conferred upon men whose lives had been forfeited? And is it to be endured then in this free land, made free too by the virtue of our forefathers, who placed the King upon his throne to maintain this freedom, that forty or fifty thousand people in the

different parts of the kingdom, assembling in their little societies to spread useful knowledge, and to diffuse the principles of liberty—which the more widely they are spread the surer is the condition of our free Government,—are in a moment, without warning, without any law or principle to warrant it, and without precedent or example, to be branded as traitors, and to be decimated as victims for punishment! The Constitutional Society having answered the letter of the 27th of March in the manner I stated to you, committees from each of the two societies were appointed to confer together. The Constitutional Society appointed Mr. Joyce, Mr. Kidd, Mr. Wardle, and Mr. Holcroft, all indicted; and Mr. Sharpe, the celebrated engraver, not indicted, but examined as a witness by the Crown. Five were appointed by the Corresponding Society to meet these gentlemen, viz., Mr. Baxter, Mr. Moore, Mr. Thelwall, and Mr. Hodgson, all indicted, and Mr. Lovatt, against whom the bill was thrown out. These gentlemen met at the house of Mr. Thelwall on the 11th of April, and there published the resolutions already commented on in conformity with the general objects of the two societies, expressed in the letter of the 27th of March, and agreed to continue to meet on Mondays and Thursdays for further conference on the subject. The first Monday was the 14th of April, of which we have heard so much, and no meeting was held on that day; the first Thursday was the 17th of April, but there was no meeting; the 21st of April was the second Monday, but there was still no meeting; the 24th of April was the second Thursday, when the five of the Corresponding Society attended, but nobody coming to meet them from the other, nothing of course was transacted. On Monday, the 28th of April, three weeks after their first appointment, this bloody and impatient band of conspirators, seeing that a Convention Bill was in projection, and that Hessians were landing on our coasts, at last assembled themselves. And now we come to the point of action. Gentlemen, they met; they shook hands with each other; they talked over the news and the pleasures of the day; they wished one another a good evening, and retired to their homes:—it is in vain to hide it, they certainly did all these things. The same *alarming* scene was repeated on the three following days of meeting, and on Monday, May the 12th, would, but for the vigilance of Government, have probably again taken place; but on that day Mr. Hardy was arrested, his papers seized, and the conspiracy which pervaded this devoted country was dragged into the face of day. To be serious, gentlemen, you have LITERALLY the whole of it before you in the meetings I have just stated; in which you find ten gentlemen, appointed by two peaceable societies, conversing upon the subject of a constitutional reform in Parliament, publishing the result of their deliberations, without any other arms than one supper-knife; which, when I come to the subject of arms, I will, in form, lay before you. Yet for this, and for

this alone, you are asked to devote the prisoner before you and his unfortunate associates to the pains and penalties of death, and not to death alone, but to the eternal stigma and infamy of having conceived the detestable and horrible design of dissolving the Government of their country, and of striking at the life of their Sovereign, who had never given offence to them, nor to any of his subjects.

Gentlemen, as a conspiracy of this formidable extension, which had no less for its object than the sudden annihilation of all the existing authorities of the country, and of everything that supported them, could not be even gravely stated to have an existence, without contemplation of force to give it effect; it was absolutely necessary to impress upon the public mind, and to establish, by formal evidence, upon the present occasion, that such a force was actually in preparation. This most important and indispensable part of the cause was attended with insurmountable difficulties, not only from its being unfounded in fact, but because it had been expressly negatived by the whole conduct of Government: for although the motions of all these societies had been watched for two years together; though their spies had regularly attended, and collected regular journals of their proceedings; yet, when the first report was finished, and the Habeas Corpus Act suspended upon the foundation of the facts contained in it, there was not to be found from one end of it to the other even the insinuation of arms. I believe that this circumstance made a great impression upon all the thinking dispassionate part of the public, and that the materials of the first report were thought to furnish but a slender argument to support such a total eclipse of liberty. No wonder then, that the discovery of a pike in the interval between the two reports should have been highly estimated. I mean no reflections upon Government, and only state the matter, as a man of great wit very publicly reported it; he said that the discoverer, when he first beheld the long-looked-for pike, was transported beyond himself with enthusiasm and delight, and that he hung over the rusty instrument with all the raptures of a fond mother, who embraces her first-born infant, "*and thanks her God for all her travail past.*"

In consequence of this discovery, whoever might have the merit of it, and whatever the discoverer might have felt upon it, persons were sent by Government (and properly sent) into all corners of the kingdom to investigate the extent of the mischief. The fruit of this inquiry has been laid before you, and I pledge myself to sum up the evidence which you have had upon the subject, not by parts, or by general observations, but in the same manner as the Court itself must sum it up to you, when it lays the whole body of the proof with fidelity before you. Notwithstanding all the declamations upon French anarchy, I think I may safely assert, that it has been distinctly proved, by the evidence, that the Sheffield people were for universal representation in a British House of Commons.

This appears to have been the general sentiment, with the exception of one witness, whose testimony makes the truth and *bona fides* of the sentiments far more striking; the witness I allude to (George Widdison), whose evidence I shall state in his place, seems to be a plain, blunt, honest man, and by the by, which must never be forgotten of any of them, the Crown's witness. I am not interested in the veracity of any of them, for (as I have frequently adverted to) the Crown must take them for better for worse—it must support each witness, and the whole body of its evidence throughout. If you do not believe the whole of what is proved by a witness, what confidence can you have in part of it, or what part can you select to confide in? If you are deceived in part, who shall measure the boundaries of the deception? This man says he was at first for universal suffrage; Mr. Yorke had persuaded him, from all the books, that it was the best; but that he afterwards saw reason to think otherwise, and was not for going the length of the Duke of Richmond; but that all the other Sheffield people were for the Duke's plan; a fact confirmed by the cross-examination of every one of the witnesses. You have, therefore, positively and distinctly, upon the universal authority of the evidence of the Crown, the people of Sheffield, who are charged as at the head of a republican conspiracy, proved to be associated on the very principles which, at different times, have distinguished the most eminent persons in this kingdom; and the charge made upon them, with regard to arms, is cleared up by the same universal testimony.

You recollect that, at a meeting held upon the Castle Hill, there were two parties in the country, and it is material to attend to what these two parties were. In consequence of the King's proclamation, a great number of honourable, zealous persons, who had been led by a thousand artifices to believe that there was a just cause of alarm in the country, took very extraordinary steps for support of the magistracy. The publicans were directed not to entertain persons who were friendly to a reform of Parliament; and alarms of change and revolution pervaded the country, which became greater and greater, as our ears were hourly assailed with the successive calamities of France. Others saw things in an opposite light, and considered that these calamities were made the pretext for extinguishing British liberty. Heart-burnings arose between the two parties; and some, I am afraid a great many, wickedly or ignorantly interposed in a quarrel which zeal had begun. The societies were disturbed in their meetings, and even the private dwellings of many of their members were illegally violated. It appears by the very evidence for the Crown, by which the cause must stand or fall, that many of the friends of reform were daily insulted,—their houses threatened to be pulled down, and their peaceable meetings beset by pretended magistrates, without the process of the law. These proceedings naturally suggested the propriety of having

arms for self-defence, the first and most unquestionable privilege of man, in or out of society, and expressly provided for by the very letter of English law. It was ingeniously put by the learned counsel, in the examination of a witness, that it was complained of amongst them, that very little was sufficient to obtain a warrant from some magistrates, and that therefore it was as well to be provided for those who might have warrants as for those who had none. Gentlemen, I am too much exhausted to pursue or argue such a difference, even if it existed upon the evidence, because if the societies in question (however mistakenly) considered their meetings to be legal, and the warrants to disturb them to be beyond the authority of the magistrate to grant, they had a right, at the peril of the legal consequences, to stand upon their defence; and it is no transgression of the law, much less high treason against the King, to resist his officers when they pass the bounds of their authority. So much for the general evidence of arms; and the first and last time that even the name of the prisoner is connected with the subject, is by a letter he received from a person of the name of Davison. I am anxious that this part of the case should be distinctly understood, and I will, therefore, bring back this letter to your attention. The letter is as follows:—

“FELLOW-CITIZEN,

“The barefaced aristocracy of the present Administration has made it necessary that we should be prepared to act on the defensive against any attack they may command their newly-armed minions to make upon us. A plan has been hit upon, and if encouraged sufficiently, will no doubt have the effect of furnishing a quantity of pikes to the patriots, great enough to make them formidable. The blades are made of steel, tempered and polished after an approved form. They may be fixed into any shafts (but *fir* ones are recommended) of the girth of the accompanying hoops at the top end, and about an inch more at the bottom.

“The blades and hoops (more than which cannot properly be sent to any great distance) will be charged one shilling. Money to be sent with the orders.

“As the institution is in its infancy, immediate encouragement is necessary.

“*Orders may be sent to the secretary of the Sheffield Constitutional Society.* [Struck out.]

“RICHARD DAVISON.

“*Sheffield, April 24, 1794.*”

Gentlemen, you must recollect (for, if it should escape you, it might make a great difference) that Davison directs the answer to this letter to be sent to Robert Moody at Sheffield, to prevent post-office suspicion; and that he also encloses in it a similar one which Mr. Hardy was to forward to Norwich, in order that the society at

that place might provide pikes for themselves, in the same manner that Davison was recommending, through Hardy, to the people of London. Now, what followed upon the prisoner's receiving this letter? It is in evidence by this very Moody, to whom the answer was to be sent, and who was examined as a witness by the Crown, *that he never received any answer to the letter*; and although there was an universal seizure of papers, no such letter, nor any other, appeared to have been written; and what is more, the letter to Norwich from Davison, enclosed in his letter to Hardy, was never forwarded, but was found in his custody when he was arrested, three weeks afterwards, folded up in the other, and unopened as he received it. Good God! what has become of the humane sanctuary of English justice—where is the sense and meaning of the term *provably* in the statute of King Edward—if such evidence can be received against an English subject on a trial for his life? If a man writes a letter to me about pikes or about anything else, can I help it? And is it evidence (except to acquit me of suspicion) when it appears that nothing is done upon it? Mr. Hardy never before corresponded with Davison—he never desired him to write to him. How indeed could he desire him, when his very existence was unknown to him? He never returned an answer; he never forwarded the enclosed to Norwich; he never even communicated the letter itself to his own society, although he was its secretary, which showed he considered it as the unauthorised, officious correspondence of a private man; he never acted upon it at all, nor appears to have regarded it as dangerous or important, since he neither destroyed nor concealed it. Gentlemen, I declare I hardly know in what language to express my astonishment that the Crown can ask you to shed the blood of the man at the bar upon such foundations. Yet, this is the whole of the written evidence concerning arms; for the remainder of the plot rests, for its foundation, upon the parole evidence, the whole of which I shall pursue with precision, and not suffer a link of the chain to pass unexamined.

William Camage was the first witness: he swore that the Sheffield societies were frequently insulted and threatened to be dispersed, so that the people in general thought it necessary to defend themselves against illegal attacks; that the justices having officiously intruded themselves into their peaceable and legal meetings, they thought they had a right to be armed; but they did not claim this right under the law of nature or by theories of government, but as ENGLISH SUBJECTS under the Government of ENGLAND; for they say in their paper, which has been read by the Crown that would condemn them, that they were entitled by the BILL OF RIGHTS to be armed. Gentlemen, they state their title truly. The preamble of that statute enumerates the offences of King James the Second, amongst the chief of which was his

causing his subjects to be disarmed, and then our ancestors claim this violated right as their indefeasible inheritance. Let us, therefore, be cautious how we rush to the conclusion that men are plotting treason against the King because they are asserting a right, the violation of which has been adjudged against a King to be treason against the people. And let us not suppose that English subjects are a banditti for preparing to defend their legal liberties with pikes, because pikes may have been accidentally employed in another country to destroy both liberty and law. Camage says he was spoken to by this Davison about three dozen of pikes. What then? He is **THE CROWN'S WITNESS, WHOM THEY OFFER TO YOU AS THE WITNESS OF TRUTH**, and he started with horror at the idea of violence, and spoke with visible reverence for the King, saying, God forbid that he should touch him; but he, nevertheless, had a pike for himself. Indeed, the manliness with which he avowed it gave an additional strength to his evidence. "No doubt," says he, "I had a pike, but I would not have remained an hour a member of the society if I had heard a syllable that it was in the contemplation of anybody to employ pikes or any other arms against the King or the Government. We meant to petition Parliament through the means of the convention of Edinburgh, thinking that the House of Commons would listen to this expression of the general sentiments of the people; for it had been thrown out, he said, in Parliament, that the people did not desire it themselves."

Mr. Broomhead, whose evidence I have already commented upon, a sedate, plain, sensible man, spoke also of his affection to the Government, and of the insults and threats which had been offered to the people of Sheffield. He says, "I heard of arms on the Castle Hill, but it is fit this should be distinctly explained: a wicked handbill to provoke and terrify the multitude had been thrown about the town in the night, which caused agitation in the minds of the people, and it was then spoken of as being the right of every individual to have arms for defence; but there was no idea ever started of *resisting*, much less of *attacking*, the Government. I never heard of such a thing. I fear God," said the witness, "and honour the King, and would not have consented to send a delegate to Edinburgh but for peaceable and legal purposes."

The next evidence, upon the subject of arms, is what is proved by Widdison, to which I beg your particular attention, because, if there be any reliance upon his testimony, it puts an end to every criminal imputation upon Davison, through whom, in the strange manner already observed upon, Hardy could alone be criminated.

This man, Widdison, who was both a turner and hairdresser, and who dressed Davison's hair, and was his most intimate acquaintance, gives you an account of their most confidential conversations upon the subject of the pikes, when it is impossible that they could be imposing upon one another; and he declares, upon his

solemn oath, that Davison, without even the knowledge or authority of the Sheffield society, thinking that the same insults might be offered to the London societies, wrote the letter to Hardy, *of his own head, as the witness expressed it*, and that he, Widdison, made the pike shafts to the number of a dozen and a half. Davison, he said, was his customer. He told him that people began to think themselves in danger, and he therefore made the handles of the pikes for sale to the number of a dozen and a half, and one, likewise, for himself, without conceiving that he offended against any law. "I love the King," said Widdison, "as much as any man, and all the people I associated with did the same. I would not have stayed with them if they had not. Mr. Yorke often told me privately that he was for universal representation, and so were we all; THE DUKE OF RICHMOND'S PLAN WAS OUR ONLY OBJECT." This was the witness who was shown the Duke's letter, and spoke to it as being circulated, and as the very creed of the societies. This evidence shows, beyond all doubt, the genuine sentiments of these people, because it consists of their most confidential communications with one another; and the only answer, therefore, that can possibly be given to it is, that the witnesses who deliver it are imposing upon the Court. But this (as I have wearied you with reiterating) the Crown cannot say; for, in that case, their whole proof falls to the ground together, since it is only from the same witnesses that the very existence of these pikes and their handles comes before us; and, if you suspect their evidence *in part*, for the reasons already given, it must be *in toto* rejected. My friend is so good as to furnish me with this further observation: that Widdison said he had often heard those who called themselves aristocrats say, that if an invasion of the country should take place, they would begin with destroying their enemies at home, that they might be unanimous in the defence of their country.

John Hill was next called: he is a cutler, and was employed by Davison to make the blades for the pikes. He saw the letter which was sent to Hardy, and knew that it was sent lest there should be the same call for defence in London against illegal attacks upon the societies, for that at Sheffield they were daily insulted, and that the opposite party came to his own house, fired muskets under the door, and threatened to pull it down. He swears that they were, to a man, faithful to the King, and that the reform proposed was in the Commons' House of Parliament.

John Edwards was called further to connect the prisoner with this combination of force; but so far from establishing it, he swore, upon his cross-examination, that his only reason for going to Hardy's was that he wanted a pike for his own defence, without connection with Davison or with Sheffield, and without concert or correspondence with anybody. He had heard, he said, of the violences at Sheffield, and of the pikes that had been made there

for defence ; that Hardy, on his application, showed him the letter which, as has appeared, he never showed to any other person. This is the whole sum and substance of the evidence which applies to the charge of pikes, after the closest investigation, under the sanction and by the aid of Parliament itself ; evidence which, so far from establishing the fact, would have been a satisfactory answer to almost any testimony by which such a fact could have been supported ; for in this unparalleled proceeding the prisoner's counsel is driven by his duty to dwell upon the detail of the Crown's proofs, because the whole body of it is the completest answer to the indictment which even a free choice itself could have selected. It is further worthy of your attention, that, as far as the evidence proceeds from these plain natural sources, which the Crown was driven to for the necessary foundation of the proceedings before you, it has been simple, uniform, natural, and consistent ; and that, whenever a different complexion was to be given to it, it was only through the medium of spies and informers, and of men, independently of their infamous trade, of the most abandoned and profligate characters.

Before I advert to what has been sworn by this description of persons, I will give you a wholesome caution concerning them, and having no eloquence of my own to enforce it, I will give it to you in the language of the same gentleman whose works are always seasonable, when moral or political lessons are to be rendered delightful. Look, then, at the picture of society as Mr. Burke has drawn it, under the dominion of spies and informers—I say under their *dominion*, for a resort to spies may on occasions be justifiable, and their evidence, when confirmed, may deserve implicit credit ; but I say under the *dominion* of spies and informers, because the case of the Crown must stand alone upon their evidence, and upon their evidence, not only unconfirmed, but in *direct contradiction to every witness not an informer or a spy*, and in a case too where the truth, whatever it is, lies within the knowledge of forty or fifty thousand people. Mr. Burke says—I believe I can remember it without reference to the book :—

“ A mercenary informer knows no distinction. Under such a system the obnoxious people are slaves, not only to the Government, but they live at the mercy of every individual ; they are at once the slaves of the whole community and of every part of it, and the worst and most unmerciful men are those on whose goodness they most depend.

“ In this situation men not only shrink from the frowns of a stern magistrate, but are obliged to fly from their very species. The seeds of destruction are sown in civil intercourse and in social habitudes. The blood of wholesome kindred is infected. The tables and beds are surrounded with snares. All the means given by Providence to make life safe and comfortable are perverted into

instruments of terror and torment. This species of universal subservency, that makes the very servant who waits behind your chair the arbiter of your life and fortune, has such a tendency to degrade and abase mankind, and to deprive them of that assured and liberal state of mind which alone can make us what we ought to be, that I vow to God I would sooner bring myself to put a man to immediate death for opinions I disliked, and so to get rid of the man and his opinions at once, than to fret him with a feverish being, tainted with the jail distemper of a contagious servitude, to keep him above ground an animated mass of putrefaction, corrupted himself, and corrupting all about him."

Gentlemen, let me bring to your recollection the deportment of the first of this tribe, Mr. Alexander, who could not in half an hour even tell where he had lived, or why he had left his master. Does any man believe that he had forgotten these most recent transactions of his life? Certainly not; but his history would have undone his credit, and must therefore be concealed. He had lived with a linendraper, whose address we could scarcely get from him, and they had parted because they had words. What were the words? We were not to be told that. He then went to a Mr. Killerby's, who agreed with him at twenty-five guineas a year. Why did he not stay there? He was obliged, it seems, to give up this lucrative agreement because he was obliged to attend here as a witness. Gentlemen, Mr. Killerby lives only in Holborn, and was he obliged to give up a permanent engagement with a tradesman in Holborn because he was obliged to be absent at the Old Bailey for five minutes in one single day? I asked him if he had told Mr. White, the Solicitor for the Treasury, who would not have been so cruel as to deprive a man of his bread by keeping him upon attendance which might have been avoided by a particular notice. The thing spoke for itself. He had never told Mr. White; but had he ever told Mr. Killerby? For how else could he know that his place was inconsistent with his engagement upon this trial? No, he had never told him! How then did he collect that his place was inconsistent with his duty here? This question never received any answer. You saw how he dealt with it, and how he stood stammering, not daring to lift up his countenance in any direction—confused, disconcerted, and confounded.

Driven from the accusation upon the subject of pikes, and even from the very colour of accusation, and knowing that nothing was to be done without the proof of arms, we have got this miserable, solitary knife, held up to us as the engine which was to destroy the constitution of this country; and Mr. Groves, an Old Bailey solicitor, employed as a spy upon the occasion, has been selected to give probability to this monstrous absurdity by his *respectable* evidence. I understand that this same gentleman has carried his system of spying to such a pitch as to practise it since this unfortunate man

has been standing a prisoner before you, proffering himself as a friend to the committee preparing his defence, that he might discover to the Crown the materials by which he meant to defend his life. I state this only from report, and I hope in God I am mistaken ; for human nature starts back appalled from such atrocity, and shrinks and trembles at the very statement of it. But as to the perjury of this miscreant, it will appear palpable beyond all question, and he shall answer for it in due season. He tells you he attended at Chalk Farm ; and that there, forsooth, amongst about seven or eight thousand people, he saw two or three persons with knives. He might, I should think, have seen many more, as hardly any man goes without a knife of some sort in his pocket. He asked, however, it seems, where they got these knives, and was directed to Green, a hairdresser, who deals besides in cutlery ; and accordingly this notable Mr. Groves went (as he told us) to Green's, and asked to purchase a knife, when Green, in answer to him, said, "Speak low, for my wife is a damned aristocrat." This answer was sworn to by the wretch, to give you the idea that Green, who had the knives to sell, was conscious that he kept them for an illegal and wicked purpose, and that they were not to be sold in public. The door, he says, being ajar, the man desired him to speak low, from whence he would have you understand that it was because this aristocratic wife was within hearing. This, gentlemen, is the testimony of Groves ; and Green himself is called as the next witness, and called by whom ? Not by me—I know nothing of him ; he is the Crown's own witness. He is called to confirm Grove's evidence ; but *not being a spy*, he declared solemnly upon his oath, and I can confirm his evidence by several respectable people, that the knives in question lie constantly, and lay then, in his open shop-window, in what is called the show-glass, where cutlers, like other tradesmen, expose their ware to public view ; and that the knives differ in nothing from others publicly sold in the Strand, and every other street in London ; that he bespoke them from a rider, who came round for orders in the usual way ; that he sold only fourteen in all, and that they were made up in little packets, one of which Mr. Hardy had, who was to choose one for himself, but four more were found in his possession, because he was arrested before Green had an opportunity of sending for them.

Gentlemen, I think the pikes and knives are now completely disposed of ; but something was said also about guns. Let us, therefore, see what that amounts to. It appears that Mr. Hardy was applied to by Samuel Williams, a gun-engraver, who was not even a member of any society, and who asked him if he knew anybody who wanted a gun. Hardy said he did not ; and undoubtedly, upon the Crown's own showing, it must be taken for granted that if at that time he had been acquainted with any plan of arming,

he would have given a different answer, and would have jumped at the offer. About a fortnight afterwards, however (Hardy in the interval having become acquainted with Franklow), Williams called to buy a pair of shoes, and then Hardy, recollecting his former application, referred him to Franklow, who had in the most public manner raised the forty men who were called the Loyal Lambeth Association : so that, in order to give this transaction any bearing upon the charge, it became necessary to consider Franklow's association as an armed conspiracy against the Government, though the forty people who composed it were collected by public advertisement, though they were enrolled under public articles, and though Franklow himself, as appears from the evidence, attended publicly at the Globe Tavern in his uniform, whilst the cartouch boxes and the other accoutrements of these secret conspirators lay openly upon his shop-board, exposed to the open view of all his customers and neighbours. This story, therefore, is not less contemptible than that which you must have all heard concerning Mr. Walker, whom I went to defend at Lancaster, where that respectable gentleman was brought to trial upon such a trumped-up charge, supported by the solitary evidence of one Dunn, a most infamous witness. But what was the end of that prosecution ? I recollect it to the honour of my friend, Mr. Law, who conducted it for the Crown, who, knowing that there were persons whose passions were agitated upon these subjects at that moment, and that many persons had enrolled themselves in societies to resist conspiracies against the Government, behaved in a most manful and honourable manner—in a manner indeed, which the public ought to know, and which I hope it never will forget : he would not even put me upon my challenges to such persons, but withdrew them from the pannel ; and when he saw the complexion of the affair, from the contradiction of the infamous witness whose testimony supported it, he honourably gave up the cause.

Gentlemen, the evidence of Lynam does not require the same contradiction which fell upon Mr. Groves, because it destroys itself by its own intrinsic inconsistency. I could not, indeed, if it were to save my life, undertake to state it to you. It lasted, I think, about six or seven hours, but I have marked under different parts of it passages so grossly contradictory, matter so impossible, so inconsistent with any course of conduct, that it will be sufficient to bring these parts to your view to destroy all the rest. But let us first examine in what manner this matter, such as it is, was recorded. He professed to speak from notes, yet I observed him frequently looking up to the ceiling whilst he was speaking. When I said to him, "Are you now speaking from a note ? Have you got any note of what you are now saying ?" he answered, "Oh, no, this is from recollection." Good God Almighty ! recollection mixing itself with notes in a case of high treason ! He did not even take down the words—nay, to do the man justice, he did not even affect to

have taken the words; but only the substance, as he himself expressed it. OH, EXCELLENT EVIDENCE! THE SUBSTANCE OF WORDS TAKEN DOWN BY A SPY, AND SUPPLIED, WHEN DEFECTIVE, BY HIS MEMORY. But I must not call him a spy, for it seems he took them *bonâ fide* as a delegate, and yet *bonâ fide* as an informer. What a happy combination of fidelity!—faithful to serve, and faithful to betray!—correct to record for the business of the society, and correct to dissolve and to punish it! What, after all, do the notes amount to? I will advert to the parts I alluded to. They were, it seems, to go to Frith Street to sign the declaration of the Friends of the Liberty of the Press, which lay there already signed by between twenty and thirty members of the House of Commons, and many other respectable and opulent men, and then they were to begin civil confusion, and the King's head and Mr. Pitt's were to be placed on Temple Bar. Immediately after which we find them resolving unanimously to thank Mr. Wharton for his speech to support the glorious Revolution of 1688, which supports the very throne that was to be destroyed! which same speech they were to circulate in thousands for the use of the societies throughout the kingdom. Such incoherent, impossible matter, proceeding from such a source, is unworthy of all further concern.

Thus driven out of everything which relates to arms, and from every other matter which can possibly attach upon life, they have recourse to an expedient which, I declare, fills my mind with horror and terror. It is this: The Corresponding Society had (you recollect), two years before, sent delegates to Scotland, with specific instructions peaceably to pursue a parliamentary reform. When the convention which they were sent to was dispersed, they sent no others, for they were arrested when only considering of the propriety of another convention. It happened that Mr. Hardy was the secretary during the period of these Scotch proceedings, and the letters consequently written by him during that period were all official letters from a large body, circulated by him in point of form. When the proposition took place for calling a second convention, Mr. Hardy continued to be secretary, and, in that character, signed the circular letter read in the course of the evidence, which appears to have found its way, in the course of circulation, into SCOTLAND. This single circumstance has been admitted as the foundation of receiving in evidence against the prisoner a long transaction imputed to one Watt at Edinburgh, whose very existence was unknown to Hardy. This Watt had been employed by Government as a spy, but at last caught a Tartar in his spyship; for, in endeavouring to urge innocent men to a project which never entered into their imaginations, he was obliged to show himself ready to do what he recommended to others; and the tables being turned upon him, he was hanged by his employers. This man Watt read from a paper designs to be accomplished, but which he never intended

to attempt, and the success of which he knew to be visionary. To suppose that Great Britain could have been destroyed by such a rebel as Watt, would be, as Dr. Johnson says, to expect that a great city might be drowned by the overflowing of its kennels. But whatever might be the peril of Watt's conspiracy, what had Hardy to do with it? The people with Watt were five or six persons, wholly unknown to Hardy, and not members of any society of which Mr. Hardy was a member. I vow to God, therefore, that I cannot express what I feel, when I am obliged to state the evidence by which he is sought to be affected. A letter—viz., the circular letter signed by Hardy for calling another convention—is shown to George Ross, who says he received it from one Stock, who belonged to a society which met in Nicolson Street in Edinburgh, and that he sent it to Perth, Strathaven, and Paisley, and other places in Scotland; and the single unconnected evidence of this public letter finding its way into Scotland, is made the foundation of letting in the whole evidence which hanged Watt against Hardy, who never knew him. Government hanged its own spy in Scotland upon that evidence, and it may be sufficient evidence for that purpose. I will not argue the case of a dead man, and, above all, of such a man; but I will say, that too much money was spent upon this performance, as I think it cost Government about fifty thousand pounds. McEwan says, that Watt read from a paper to a committee of six or seven people, of which he, the witness, was a member, that gentlemen residing in the country were not to leave their habitations under pain of death; that an attack was to be made in the manner you remember, and that the Lord Justice-Clerk and the Judges were to be cut off by these men in buckram; and then an address was to be sent to the King, desiring him to dismiss his Ministers and to put an end to the war, or that he might expect bad consequences. WHAT IS ALL THIS TO MR. HARDY? How is it possible to affect HIM with any part of this? Hear the sequel; and then judge for yourselves. Mr. Watt said (i.e., the man who is hanged, said), after reading the paper, that he, Watt, wished to correspond with Mr. Hardy in a safe manner; so that, because a ruffian and a scoundrel, whom I never saw or heard of, chooses, at the distance of four hundred miles, to say that he *wishes to correspond with me*, I am to be involved in the guilt of his actions! It is not proved, or insinuated, that Mr. Hardy ever saw, or heard of, or knew, that such men were in being as Watt or Downie; nor is it proved or asserted that any letter was, in fact, written by either of them to Hardy, or to any other person. No such letter has been found in his possession, nor a trace of any connection between them and any member of any English society. The truth I believe is, that nothing was intended by Watt but to entrap others to obtain a reward for himself, *and he has been amply and justly rewarded*. Gentlemen, I desire to be understood to be making no attacks upon

Government. I have wished, throughout the whole cause, that good intentions may be imputed to it; but I really confess that it requires some ingenuity for Government to account for the original existence of all this history, and its subsequent application to the present trial. They went down to Scotland, after the arrest of the prisoners, in order, I suppose, that we might be taught the law of high treason by the Lord Justice-Clerk of Edinburgh, and that there should be a sort of rehearsal to teach the people of England to administer English laws; for, after all this expense and preparation, no man was put upon his trial, nor even arraigned under the special commission in Scotland, but these two men—one for reading this paper, and the other for not dissenting from it when it was read; and, with regard to this last unfortunate person, the Crown thought it indecent, as it would indeed have been indecent and scandalous, to execute the law upon him. As a gentleman upon his jury said, he would die rather than convict Downie without a recommendation of mercy, and he was only brought over to join in the verdict, under the idea that he would not be executed, and accordingly he has not suffered execution. If Downie then was an object of mercy, or rather of justice, though he was in the very room with Watt, and heard distinctly the proposition, upon what possible ground can they demand the life of the prisoner at the bar, on account of a connection with the very same individual, *though he never corresponded with him, nor saw him, nor heard of him—to whose very being he was an utter stranger?*

Gentlemen, it is impossible for me to know what impression this observation makes upon you or upon the Court; but I declare I am deeply impressed with the application of it. How is a man to defend himself against such implications of guilt? Which of us all would be safe, standing at the bar of God or man, if he were even to answer for all his *own* expressions, without taking upon him the crimes or rashnesses of *others*? This poor man has, indeed, none of his own to answer for; yet how can he stand safely in judgment before you, if, in a season of alarm and agitation, with the whole pressure of Government upon him, your minds are to be distracted with criminating materials brought from so many quarters, and of an extent which mocks all power of discrimination? I am conscious that I have not adverted to the thousandth part of them; yet I am sinking under fatigue and weakness—I am at this moment scarcely able to stand up whilst I am speaking to you, deprived as I have been, for nights together, of everything that deserves the name of rest, repose, or comfort. I therefore hasten, whilst yet I may be able, to remind you once again of the great principle into which all I have been saying resolves itself.

Gentlemen, my whole argument, then, amounts to no more than this, that before the crime of compassing **THE KING'S DEATH** can be found *by you, the jury*, whose province it is to judge of its exist-

ence, it must be *believed by you* to have existed in point of fact. Before you can adjudge A FACT, you *must believe it*—not suspect it, or imagine it, or fancy it—BUT BELIEVE IT; and it is impossible to impress the human mind with such a reasonable and certain belief, as is necessary to be impressed, before a Christian man can adjudge his neighbour to the smallest penalty, much less to the pains of death, without having such evidence as a reasonable mind will accept of as the infallible test of truth. And what is that evidence? Neither more nor less than that which the constitution has established in the courts for the general administration of justice—namely, that the evidence convinces the jury, beyond all reasonable doubt, that the criminal *intention*, constituting the crime, existed in the mind of the man upon trial, and was the mainspring of his conduct. The rules of evidence, as they are settled by law, and adopted in its general administration, are not to be overruled or tampered with. They are founded in the charities of religion—in the philosophy of nature—in the truths of history, and in the experience of common life; and whoever ventures rashly to depart from them, let him remember that it will be meted to him in the same measure, and that both God and man will judge him accordingly. These are arguments addressed to your reasons and consciences, not to be shaken in upright minds by any precedent, for no precedents can sanctify injustice; if they could, every human right would long ago have been extinct upon the earth. If the State trials in bad times are to be searched for precedents, what murders may you not commit; what law of humanity may you not trample upon; what rule of justice may you not violate; and what maxim of wise policy may you not abrogate and confound? If precedents in bad times are to be implicitly followed, why should we have heard any evidence at all? You might have convicted without any evidence, for many have been so convicted, and in this manner murdered, even by Acts of Parliament. If precedents in bad times are to be followed, why should the Lords and Commons have investigated these charges, and the Crown have put them into this course of judicial trial?—since, without such a trial, and even after an acquittal upon one, they might have attainted all the prisoners by Act of Parliament: they did so in the case of Lord Strafford. There are precedents, therefore, for all such things; but such precedents as could not for a moment survive the times of madness and distraction which gave them birth, but which, as soon as the spurs of the occasions were blunted, were repealed and execrated even by Parliaments which (little as I may think of the present) ought not to be compared with it: Parliaments sitting in the darkness of former times,—in the night of freedom,—before the principles of government were developed, and before the constitution became fixed. The last of these precedents, and all the proceedings upon it, were ordered to

be taken off the file and burned, to the intent that the same might no longer be visible in after-ages; an order dictated, no doubt, by a pious tenderness for national honour, and meant as a charitable covering for the crimes of our fathers. But it was a sin against posterity—it was a treason against society; for, instead of commanding them to be burned, they should rather have directed them to be blazoned in large letters upon the walls of our courts of justice, that, like the characters deciphered by the prophet of God to the Eastern tyrant, they might enlarge and blacken in your sights, to terrify you from acts of injustice.

In times, when the whole habitable earth is in a state of change and fluctuation,—when deserts are starting up into civilised empires around you,—and when men, no longer slaves to the prejudices of particular countries, much less to the abuses of particular governments, enlist themselves, like the citizens of an enlightened world, into whatever communities their civil liberties may be best protected; it never can be for the advantage of this country to prove that the strict, unextended letter of her laws is no security to its inhabitants. On the contrary, when so dangerous a lure is everywhere holding out to emigration, it will be found to be the wisest policy of Great Britain to set up her happy constitution,—the strict letter of her guardian laws, and the proud condition of equal freedom, which her highest and her lowest subjects ought equally to enjoy; it will be her wisest policy to set up these first of human blessings against those charms of change and novelty which the varying condition of the world is hourly displaying, and which may deeply affect the population and prosperity of our country. In times when the subordination to authority is said to be everywhere but too little felt, it will be found to be the wisest policy of Great Britain to instil into the governed an almost superstitious reverence for the strict security of the laws; which, from their equality of principle, beget no jealousies or discontent; which, from their equal administration, can seldom work injustice; and which, from the reverence growing out of their mildness and antiquity, acquire a stability in the habits and affections of men far beyond the force of civil obligation: whereas severe penalties, and arbitrary constructions of laws intended for security, lay the foundations of alienation from every human government, and have been the cause of all the calamities that have come, and are coming upon the earth.

Gentlemen, what we read of in books makes but a faint impression upon us, compared to what we see passing under our eyes in the living world. I remember the people of another country, in like manner, contending for a renovation of their constitution, sometimes illegally and turbulently, but still devoted to an honest end. I myself saw the people of Brabant so contending for the ancient constitution of the good Duke of Burgundy. How was this

people dealt by? All, who were only contending for their own rights and privileges, were supposed to be of course disaffected to the Emperor: they were handed over to courts constituted for the emergency, as this is, and the Emperor marched his army through the country till all was peace; but such peace as there is in Vesuvius or *Ætna* the very moment before they vomit forth their lava, and roll their conflagrations over the devoted habitations of mankind. When the French approached, the fatal effects were suddenly seen of a Government of constraint and terror; the well-affected were dispirited, and the disaffected inflamed into fury. At that moment the Archduchess fled from Brussels, and the Duke of Saxe-Teschen was sent express to offer the *joyeuse entrée* so long petitioned for in vain. But the season of concession was past; the storm blew from every quarter, and the throne of Brabant departed for ever from the House of Burgundy. Gentlemen, I venture to affirm, that, with other councils, this fatal prelude to the last revolution in that country might have been averted: if the Emperor had been advised to make the concessions of justice and affection to his people, they would have risen in a mass to maintain their prince's authority, interwoven with their own liberties; and the French, the giants of modern times, would, like the giants of antiquity, have been trampled in the mire of their own ambition. In the same manner a far more splendid and important crown passed away from His Majesty's illustrious brows: THE IMPERIAL CROWN OF AMERICA. The people of that country too, for a long season, contended as subjects, and often with irregularity and turbulence, for what they felt to be their rights: and oh, gentlemen! that the inspiring and immortal eloquence of that man, whose name I have so often mentioned, had then been heard with effect! What was his language to this country when she sought to lay burdens on America,—not to support the dignity of the Crown, or for the increase of national revenue, but to raise a fund for the purpose of corruption; a fund for maintaining those tribes of hireling skipjacks, which Mr. Tooke so well contrasted with the hereditary nobility of England! Though America would not bear this imposition, she would have borne any useful or constitutional burden to support the parent State. "For that service, for all service," said Mr. Burke, "whether of revenue, trade, or empire, my trust is in her interest in the British constitution. My hold of the colonies is in the close affection which grows from common names, from kindred blood, from similar privileges, and equal protection. These are ties which, though light as air, are as strong as links of iron. Let the colonies always keep the idea of their civil rights associated with your Governments, they will cling and grapple to you, and no force under heaven will be of power to tear them from their allegiance. But let it be once understood that your Government may be one thing, and their privileges

another ; that these two things may exist without any mutual relation ; the cement is gone, the cohesion is loosened, and everything hastens to decay and dissolution. As long as you have the wisdom to keep the sovereign authority of this country as the sanctuary of liberty, the sacred temple consecrated to our common faith, wherever the chosen race and sons of England worship freedom, they will turn their faces toward you. The more they multiply, the more friends you will have ; the more ardently they love liberty, the more perfect will be their obedience. Slavery they can have anywhere. It is a weed that grows in every soil. They may have it from Spain, they may have it from Prussia. But until you become lost to all feeling of your true interest and your natural dignity, freedom they can have from none but you. This is the commodity of price of which you have the monopoly. This is the true act of navigation, which binds to you the commerce of the colonies, and through them secures to you the wealth of the world. Is it not the same virtue which does everything for us here in England ? Do you imagine then, that it is the land-tax which raises your revenue ? that it is the annual vote in the Committee of Supply which gives you your army ? or that it is the Mutiny Bill which inspires it with bravery and discipline ? No ! surely no ! It is the love of the people ; it is their attachment to their Government, from the sense of the deep stake they have in such a glorious institution, which gives you your army and your navy, and infuses into both that liberal obedience, without which your army would be a base rabble, and your navy nothing but rotten timber."

Gentlemen, to conclude, my fervent wish is, that we may not conjure up a spirit to destroy ourselves, nor set the example here of what, in another country, we deplore. Let us cherish the old and venerable laws of our forefathers. Let our judicial administration be strict and pure ; and let the jury of the land preserve the life of a fellow-subject who only asks it from them upon the same terms under which they hold their own lives and all that is dear to them and their posterity for ever. Let me repeat the wish with which I began my address to you, and which proceeds from the very bottom of my heart : May it please God, who is the Author of all mercies to mankind, whose providence, I am persuaded, guides and superintends the transactions of the world, and whose guardian spirit has for ever hovered over this prosperous island, to direct and fortify your judgments. I am aware I have not acquitted myself to the unfortunate man who has put his trust in me in the manner I could have wished ; yet I am unable to proceed any further : exhausted in spirit and in strength, but confident in the expectation of justice. There is one thing more, however, that (if I can) I must state to you—namely, that I will show, by as many witnesses as it may be found necessary or convenient for you to hear upon the subject, that the views of the societies were what I have alleged

them to be; that whatever irregularities or indiscretions they might have committed, their purposes were honest; and that Mr. Hardy's, above all other men, can be established to have been so. I have indeed an honourable gentleman (Mr. Francis*) in my eye at this moment, to be called hereafter as a witness, who, being desirous in his place, as a member of Parliament, to promote an inquiry into the seditious practices complained of, Mr. Hardy offered himself voluntarily to come forward, proffered a sight of all the papers which were afterwards seized in his custody, and tendered every possible assistance to give satisfaction to the laws of his country if found to be offended. I will show, likewise, his character to be religious, temperate, humane, and moderate, and his uniform conduct all that can belong to a good subject and an honest man. When you have heard this evidence, it will, beyond all doubt, confirm you in coming to the conclusion, which, at such great length (for which I entreat your pardon), I have been endeavouring to support.

So strongly prepossessed were the multitude in favour of the innocence of the prisoner, that when Mr. Erskine had finished his speech, an irresistible acclamation pervaded the court and to an immense distance around. The streets were seemingly filled with the whole of the inhabitants of London, and the passages were so thronged that it was impossible for the Judges to get to their carriages. Mr. Erskine went out and addressed the multitude, desiring them to confide in the justice of the country; reminding them that the only security of Englishmen was under the inestimable laws of England, and that any attempt to overawe or bias them, would not only be an affront to public justice, but would endanger the lives of the accused. He then besought them to retire, and in a few minutes there was scarcely a person to be seen near the court. No spectacle could be more interesting and affecting. We cannot help being of opinion that it is the wisest policy upon all occasions to cultivate and encourage this enthusiasm of Englishmen for the protection of the law: it binds them to the State and Government of their country, and is a greater security against revolution than any restraints that the wisdom of man can impose.

The result of this memorable trial is well known. After hearing the evidence for the prisoner, which was summed up in a most able and eloquent speech by Mr., afterwards Sir, Vicary Gibbs; and after a reply of great force and ability by Lord Redesdale, then Solicitor-General, and the charge of Lord Chief-Justice Eyre, who presided in this special commission, the jury returned a verdict of NOT GUILTY.

* Afterwards Sir Phillip Francis, K. B.

*SPEECH for the Hon. RICHARD BINGHAM, afterwards
Earl of Lucan.*

THE following speech was delivered by Mr. Erskine in the Court of King's Bench, on Monday, February 24, 1794, as counsel for the Hon. Richard Bingham, afterwards Lord Lucan, in an action brought against him by Bernard Edward Howard, Esq., presumptive heir of the Duke of Norfolk, for adultery with his wife. The circumstances under which the damages were sought to be mitigated, in opposition to the severe principle regarding them insisted upon in the speech for Mr. Markham, appear fully in the speech itself.

The jury found only £500 damages.

THE SPEECH.

GENTLEMEN OF THE JURY,—My learned friend, as counsel for the plaintiff, has bespoken an address from me, as counsel for the defendant, which you must not, I assure you, expect to hear. He has thought it right (partly in courtesy to me, as I am willing to believe, and in part for the purposes of his cause) that you should suppose you are to be addressed with eloquence which I never possessed, and which, if I did, I should be incapable at this moment of exerting, because the most eloquent man, in order to exert his eloquence, must have his mind free from embarrassment on the occasion on which he is to speak. I am not in that condition. My learned friend has expressed himself as the friend of the plaintiff's family. He does not regard that family more than I do; and I stand in the same predicament towards my own honourable client and his relations: I know him and them, and because I know them, I regard them also. My embarrassment, however, only arises at being obliged to discuss this question in a public court of justice, because, could it have been the subject of private reference, I should have felt none at all in being called upon to settle it.

Gentlemen, my embarrassment is abundantly increased, when I see present a noble person, high, very high in rank in this kingdom, but not higher in rank than he is in my estimation. I speak of the noble Duke of Norfolk, who most undoubtedly must feel not a little at being obliged to come here as a witness for the defendant, in the cause of a plaintiff so nearly allied to himself. I am persuaded no man can have so little sensibility as not to feel that a person in my situation must be greatly embarrassed in discussing a question of this nature before such an audience, and between such parties as I have described.

Gentlemen, my learned friend desired you would take care not to suffer argument, or observation, or eloquence, to be called into the field, to detach your attention from the evidence in the cause, upon which alone you ought to decide. I wish my learned friend, at the moment he gave you that caution, had not *himself* given testimony of a fact to which he stood the solitary witness. I wish he had not introduced *his own evidence*, without the ordinary ceremony of being sworn. I will not follow his example. I will not tell you what I know from the conversation of my client, nor give evidence of what I know myself. My learned friend tells you that nothing can exceed the agony of mind his client has suffered, and that no words can describe his adoration of the lady he has lost. These most material points of the cause rest, however, altogether on the *single, unsupported, unsworn evidence of the COUNSEL* for the plaintiff. No RELATION has been called upon to confirm them, though we are told that the whole house of Fauconberg, Bellasyse, and Norfolk are in the avenues of the court, ready, it seems, to be called at my discretion. And yet my learned friend is himself the only witness, though the facts (and most material facts, indeed, they would have been) might have been proved by so many illustrious persons.

Now, to show you how little disposed I am to work upon you by anything but by proof—to convince you how little desirous I am to practise the arts of speech as my only artillery in this cause, I will begin with a few plain dates, and, as you have pens in your hands, I will thank you to write them down.

I shall begin with stating to you what my cause is, and shall then prove it, not by myself, but by witnesses.

The parties were married on the 24th of April 1789. The child that has been spoken of, and in terms which gave me great satisfaction, as the admitted son of the plaintiff, blessed with the affection of his parent, and whom the noble person to whom he may become heir can look upon without any unpleasant reflection—that child was born on the 12th of August 1791. Take that date, and my *learned friend's admission* that this child must have been the child of Mr. Howard; an admission which could not have been rationally or consistently made, but upon the implied admission that no illicit connection had *existed previously*, by which its existence might have been referred to the defendant. On this subject, therefore, the plaintiff must be silent,—he cannot say the parental mind has been wrong,—he cannot say hereafter, “No son of MINE SUCCEEDING,”—he can say none of these things. This child was born on the 12th of August 1791, and as Mr. Howard is *admitted* to be the author of its existence (which he must have been, if at all, in 1790), I have a right to say, that, during all that interval, this gentleman could not have had the least reasonable cause of complaint against Mr. Bingham; his jealousy must, of course, have begun *after* that period; for, had there been grounds

for it *before*, there could be no sense in the admission of his counsel, nor any foundation for that parental consolation which was brought forward in the very front of the cause.

The next dry date is, therefore, the 24th of July 1793; and I put it to his Lordship, that there is no manner of evidence which can be pressed into this cause *previous* to that time. Let me next disembarass the cause from another assertion of my learned friend—namely, that a divorce cannot take place before the birth of this child; and that, if the child happens to be a son, which is *one* contingency; and if the child so born does not die, which is *another* contingency; and if the noble Duke dies without issue, which is a *third* contingency, *then* this child might inherit the honours of the house of Norfolk. That I deny. My recent experience tells me the contrary. In a case where Mr. Stewart, a gentleman in Ireland, stood in a similar predicament, the Lords and Commons of England not only passed an act of divorce between him and his lady, but, on finding there was no access on the part of the husband, and that the child was not his, they bastardized the issue.

What then remains in this cause? Gentlemen, there remains only this: In what manner, when you have heard my evidence (for this is a cause which, like all others, must stand upon evidence), the plaintiff shall be able to prove what I have the noble Judge's authority for saying he *must* prove—viz., *the loss of the comfort and society of his wife, by the seduction of the defendant*. THAT is the very gist of the action. The loss of her affection and of domestic happiness are the only legal foundations of his complaint.

Now, before anything can be *lost*, it must have *existed*; before anything can be taken away from a man, he must have had it; before the seduction of a woman's affections from her husband can take place, he must have possessed her affections.

Gentlemen, my friend Mr. Mingay acknowledges this to be the law, and he shapes his case accordingly. He represents his client, a branch of a most illustrious house, as casting the eyes of affection upon a *disengaged* woman, and of rank equal to, or at least, suitable to his own. He states a marriage of mutual affection, and endeavours to show that this young couple, with all the ardour of love, flew into each other's embraces. He shows a child, the fruit of that affection; and finishes with introducing the seductive adulterer coming to disturb all this happiness, and to destroy the blessings which he describes. He exhibits the defendant coming with all the rashness and impetuosity of youth, careless of the consequences, and thinking of nothing but how he could indulge his own lustful appetite at the expense of another man's honour; while the unhappy husband is represented as watching with anxiety over his beloved wife, anxious to secure her affections, and on his guard to preserve her virtue. Gentlemen, if such a case, or anything resem-

bling it, is established, I shall leave the defendant to whatever measure of damages you choose in your resentment to inflict.

In order, therefore, to examine this matter (and I shall support every syllable that I utter with the most precise and uncontrovertible proofs), I will begin with drawing up the curtains of this blessed marriage-bed, whose joys are supposed to have been nipped in the bud by the defendant's adulterous seduction.

Nothing, certainly, is more delightful to the human fancy than the possession of a beautiful woman in the prime of health and youthful passion; it is, beyond all doubt, the highest enjoyment which God, in His benevolence, and for the wisest purposes, has bestowed upon His own image. I reverence, as I ought, that mysterious union of mind and body, which, while it continues our species, is the source of all our affections; which builds up and dignifies the condition of human life; which binds the husband to the wife by ties more indissoluble than laws can possibly create; and which, by the reciprocal endearments arising from a mutual passion, a mutual interest, and a mutual honour, lays the foundation of that parental affection which dies in the brutes with the necessities of nature, but which reflects back again upon the human parents the unspeakable sympathies of their offspring, and all the sweet, delightful relations of social existence. While the curtains, therefore, are yet closed upon this bridal scene, your imaginations will naturally represent to you this charming woman endeavouring to conceal sensations which modesty forbids the sex, however enamoured, too openly to reveal; wishing, beyond adequate expression, what she must not even attempt to express, and seemingly resisting what she burns to enjoy.

Alas! gentlemen, you must now prepare to see, in the room of this, a scene of horror and of sorrow! You must prepare to see a noble lady, whose birth surely required no further illustration; who had been courted to marriage before she ever heard even her husband's name; and whose affections were irretrievably bestowed upon, and pledged to, my honourable and unfortunate client. You must behold her given up to the plaintiff by the infatuation of parents, and stretched upon this bridal bed as upon a rack,—torn from the arms of a beloved and impassioned youth, himself of noble birth, only to secure the honours of a higher title,—a legal victim on the altar of heraldry.

Gentlemen, this is no high colouring for the purpose of a cause; no words of an advocate can go beyond the plain, unadorned effect of the evidence. I will prove to you that, when she prepared to retire to her chamber, she threw her desponding arms around the neck of her confidential attendant, and wept upon her, as a criminal preparing for execution. I will prove to you that she met her bridegroom with sighs and tears,—the sighs and tears of afflicted love for Mr. Bingham, and of rooted aversion to her husband. I

think I almost hear her addressing him in the language of the poet:—

“I tell thee, Howard,
Such hearts as ours were never paired above;
Ill-suited to each other; joined, not matched;
Some sullen influence, a foe to both,
Has wrought this fatal marriage to undo us.
Mark but the frame and temper of our minds,
How very much we differ. Ev’n this day,
That fills thee with such ecstasy and transport,
To me brings nothing that should make me bless it,
To think it better than the day before,
Or any other in the course of time,
That duly took its turn, and was forgotten.”

Gentlemen, this was not the sudden burst of youthful disappointment, but the fixed and settled habit of a mind deserving of a happier fate. I shall prove that she frequently spent her nights upon a couch, in her own apartments, dissolved in tears; that she frequently declared to her woman that she would rather go to Newgate than to Mr. Howard’s bed; and it will appear, by his own confession, that for months subsequent to the marriage she obstinately refused him the privileges of a husband.

To all this it will be said by the plaintiff’s counsel (as it has indeed been hinted already), that disgust and alienation from her husband could not but be expected; but that it arose from her affection for Mr. Bingham. Be it so, gentlemen. I readily admit, that if Mr. Bingham’s acquaintance with the lady had commenced *subsequent to the marriage*, the argument would be irresistible, and the criminal conclusion against him unanswerable. But has Mr. Howard a right to instruct his counsel to charge my honourable client with seduction when *he himself* was the SEDUCER? My learned friend deprecates the power of what he terms my pathetic eloquence. Alas! gentlemen, if I possessed it, the occasion forbids its exertion, because Mr. Bingham has only to defend *himself*, and cannot demand damages from Mr. Howard for depriving him of what was *his* by a title superior to any law which man has a moral right to make. Mr. Howard was NEVER MARRIED. God and nature forbid the banus of such a marriage. If, therefore, Mr. Bingham this day could have, by me, addressed to you his wrongs in the character of a plaintiff demanding reparation, what damages might I not have asked for him? and without the aid of this imputed eloquence, what damages might I not have expected?

I would have brought before you a noble youth who had fixed his affections upon one of the most beautiful of her sex, and who enjoyed hers in return—I would have shown you their suitable condition—I would have painted the expectation of an honourable union—and would have concluded by showing her to you in the arms of another, by the legal prostitution of parental choice in the teeth of affection, with child by a rival, and only reclaimed at last

after so cruel and so afflicting a divorce, with her freshest charms despoiled, and her very morals in a manner impeached, by asserting the purity and virtue of her original and spotless choice. Good God ! imagine my client to be PLAINTIFF, and what damages are you not prepared to give him ? and yet he is here as DEFENDANT, and damages are demanded against HIM ! Oh, monstrous conclusion !

Gentlemen, considering my client as perfectly safe under these circumstances, I may spare a moment to render this cause beneficial to the public.

It involves in it an awful lesson ; and more instructive lessons are taught in courts of justice than the Church is able to inculcate. Morals come in the cold abstract from pulpits ; but men smart under them practically when we lawyers are the preachers.

Let the aristocracy of England, which trembles so much for itself, take heed to its own security ; let the nobles of England, if they mean to preserve that pre-eminence which, in some shape or other, must exist in every social community, take care to support it by aiming at that which is creative, and alone creative, of real superiority. Instead of matching themselves to supply wealth, to be again idly squandered in debauching excesses, or to round the quarters of a family shield ; instead of continuing their names and honours in cold and alienated embraces, amidst the enervating rounds of shallow dissipation, let them live as their fathers of old lived before them ; let them marry as affection and prudence lead the way, and, in the ardours of mutual love, and in the simplicities of rural life, let them lay the foundation of a vigorous race of men, firm in their bodies, and moral from early habits ; and instead of wasting their fortunes and their strength in the tasteless circles of debauchery, let them light up their magnificent and hospital halls to the gentry and peasantry of the country, extending the consolations of wealth and influence to the poor. Let them but do this,—and instead of those dangerous and distracted divisions between the different ranks of life, and those jealousies of the multitude so often blindly painted as big with destruction, we should see our country as one large and harmonious family, which can never be accomplished amidst vice and corruption, by wars or treaties, by informations *ex officio* for libels, or by any of the tricks and artifices of the State. Would to God this system had been followed in the instance before us ! Surely the noble house of Fauconberg needed no further illustration, nor the still nobler house of Howard, with blood enough to have inoculated half the kingdom. I desire to be understood to make these observations as general moral reflections, and not personally to the families in question ; least of all to the noble house of Norfolk, the head of which is now present, since no man, in my opinion, has more at heart the liberty of the subject and the honour of our country.

Having shown the feeble expectation of happiness from this marriage, the next point to be considered is this—Did Mr. Bingham take advantage of that circumstance to increase the disunion? I answer, No. I will prove to you that he conducted himself with a moderation and restraint, and with a command over his passions which I confess I did not expect to find, and which in young men is not to be expected. I shall prove to you by Mr. Greville, that on this marriage taking place with the betrothed object of his affections, he went away a desponding man; his health declined; he retired into the country to restore it; and it will appear that for months afterwards he never saw this lady until by mere accident he met her, and then, so far was he from endeavouring to renew his connection with her that she came home in tears, and said he frowned at her as she passed. This I shall prove to you by the evidence in the cause.

Gentlemen, that is not all. It will appear that when he returned to town he took no manner of notice of her, and that her unhappiness was beyond all power of expression. How, indeed, could it be otherwise after the account I have given you of the marriage? I shall prove, besides, by a gentleman who married one of the daughters of a person to whom this country is deeply indebted for his eminent and meritorious service (Marquis Cornwallis), that from her utter reluctance to her husband, although in every respect honourable and correct in his manners and behaviour, he was not allowed *even the privileges of a husband* for months after the marriage. This I mentioned to you before, and only now repeat it in the statement of the proofs. Nothing better, indeed, could be expected. Who can control the will of a mis-matched, disappointed woman? Who can restrain or direct her passions? I beg leave to assure Mr. Howard (and I hope he will believe me when I say it) that I think his conduct towards this lady was just such as might have been expected from a husband who saw himself to be the object of disgust to the woman he had chosen for his wife; and it is with this view only that I shall call a gentleman to say how Mr. Howard spoke of this supposed, but, in my mind, impossible, object of his adoration. How, indeed, is it possible to adore a woman when you know her affections are riveted to another? It is unnatural! A man may have that *appetite* which is common to the brutes, and too indelicate to be described; but he can never retain an *affection* which is returned with detestation. Lady Elizabeth, I understand, was at one time going in a phaeton. "There she goes," said Mr. Howard, "God damn her! I wish she may break her neck—I should take care how I got another." This may seem unfeeling behaviour; but in Mr. Howard's situation, gentlemen, it was the most natural thing in the world, for they cordially hated one another. At last, however, the period arrived when this scene of discord became insupportable, and nothing could exceed the gene-

rosity and manly feeling of the noble person (the Duke of Norfolk) whose name I have been obliged to use in the course of this cause, in his interference to effect that separation which is falsely imputed to Mr. Bingham. He felt so much commiseration for this unhappy lady, that he wrote to her in the most affecting style. I believe I have got a letter from his Grace to Lady Elizabeth, dated Sunderland, July the 27th—that is, three days after their separation, but before he knew it had actually taken place. It was written in consequence of one received from Mr. Howard upon the subject. Among other things he says, “*I sincerely feel for you.*” Now, if the Duke had not known at that time that Mr. Bingham had her earliest and legitimate affections, she could not have been an object of that pity which she received. She was indeed an object of the sincerest pity; and the sum and substance of this mighty seduction will turn out to be no more than this—that she was affectionately received by Mr. Bingham after the final period of voluntary separation. At four o’clock this miserable couple had parted *by consent*, and the chaise was not ordered till she might be considered as a single woman by the abandonment of her husband. Had the separation been *legal and formal*, I should have applied to his Lordship, upon the most unquestionable authorities to nonsuit the plaintiff; for this action, being founded upon the loss of the wife’s society, it must necessarily fall to the ground if it appears that the society, though not the marriage union, was interrupted by a previous act of his own. In that hour of separation I am persuaded he never considered Mr. Bingham as an object of resentment or reproach. He was the author of his own misfortunes, and I can conceive him to have exclaimed, in the language of the poet, as they parted—

“ Elizabeth never loved me.
 Let no man, after me, a woman wed
 Whose heart he knows he has not; though she brings
 A mine of gold, a kingdom for her dowry.
 For let her seem, like the night’s shadowy queen,
 Cold and contemplative—he cannot trust her :
 She may, she will, bring shame and sorrow on him—
 The worst of sorrows, and the worst of shames ! ”

You have, therefore, before you, gentlemen, two young men of fashion, both of noble families, and in the flower of youth. The proceedings, though not collusive, cannot possibly be vindictive; they are indispensably preliminary to the dissolution of an inauspicious marriage which never should have existed. Mr. Howard may then profit by a useful, though an unpleasant experience, and be happier with a woman whose mind he may find disengaged; whilst the parents of the rising generation, taking warning from the lesson which the business of the day so forcibly teaches, may avert from their families and the public that bitterness of dis-

union which, while human nature continues to be itself, will ever be produced to the end of time from similar conjectures.

Gentlemen, I have endeavoured so to conduct this cause as to offend no man—I have guarded against every expression which could inflict unnecessary pain; and in doing so, I know that I have not only served my client's interests, but truly represented his honourable and manly disposition. As the case before you cannot be considered by any reasonable man as an occasion for damages, I might here properly conclude; yet, that I may omit nothing which might apply to any possible view of the subject, I will conclude with reminding you that my client is a member of a numerous family; that though Mr. Bingham's fortune is considerable, his rank calls for a corresponding equipage and expense: he has other children—one already married to an illustrious nobleman, and another yet to be married to some man who must be happy indeed if he shall know her value. Mr. Bingham, therefore, is a man of no fortune, but the heir only of, I trust, a very distant expectation. Under all these circumstances, it is but fair to believe that Mr. Howard comes here for the reasons I have assigned, and not to take money out of the pocket of Mr. Bingham to put into his own. You will therefore consider, gentlemen, whether it would be creditable for you to offer what it would be disgraceful for Mr. Howard to receive.

SPEECH for JOHN HORNE TOOKE, Esq., as delivered by Mr. ERSKINE in the Sessions House at the Old Bailey, on the 19th of November 1794.

THE SUBJECT.

THE following speech for Mr. Tooke requires no other introduction or preface than an attentive reference to the case of Thomas Hardy in this volume ;—the charges being the same, and the evidence not materially different. It is indeed not easy to conceive upon what grounds the Crown could have expected to convict Mr. Tooke after Mr. Hardy had been acquitted, since the jury upon the first trial, (some of whom were also sworn as jurors upon the second) must be supposed, by the verdict which had just been delivered, to have negatived the main fact alleged by both indictments, viz., that any convention had been held within the kingdom with intent to subvert, by rebellious force, the constitution of the kingdom. Nevertheless, the same propositions, both of law and fact, which, by reference to the former trial, appear to have been urged so unsuccessfully, were repeated, and again insisted upon, even after the following speech had been delivered. For it appears that on Mr. Tooke's addressing the Court after Mr. Erskine had spoken as to the necessity of going into the whole of the evidence, the Attorney-General answered as follows :—

"Mr. ATTORNEY-GENERAL. That address being made to me, I think it my duty to Mr. Tooke to inform him, that I speak at present under an impression that, when the case on the part of the prosecutor is understood, it has received as yet, in the opening of his counsel, no answer; and I therefore desire that Mr. Tooke will understand me as meaning to state to the jury, that I have proved the case upon the indictment.

"Mr. ERSKINE. Then we will go into the whole case."—*See Gurney's Trial of Tooke*, vol. i. p. 453.

This took place on Thursday, the 20th of November 1794, and the trial accordingly continued till Saturday the 22d.

After the acquittal of Mr. Tooke, even a third trial was proceeded upon, viz., that against Mr. Thelwall, after which all the other prisoners were discharged.

By comparing the introduction of the following speech with that for Thomas Hardy, it will be seen what high ground the advocate felt he occupied in consequence of the former acquittal.

THE SPEECH.

GENTLEMEN OF THE JURY,—When I compare the situation in which, not many days ago, I stood up to address myself to a jury in this place, with that which I now occupy—when I reflect upon the emotions which at that time almost weighed and pressed me down into the earth, with those which at this moment animate and sup-

port me, I scarcely know how to bear myself, or in what manner to conduct my cause.

I stood here, gentlemen, upon the first trial, not alone indeed, but firmly and ably supported by my honourable, excellent, and learned friend, whose assistance I still have.

[*Here Mr. Erskine was interrupted by the noise made by some workmen, which the Court ordered to be stopped; which being done, he proceeded.*]

Gentlemen, I am too much used to public life to be at all disconcerted by any of these little accidents; and, indeed, I am rather glad that any interruption gives me the opportunity of repeating a sentiment so very dear to me:—I stood up here, not alone, but ably and manfully supported by this excellent friend, who now sits by me; * yet, under circumstances of distress and agitation, which no assistance could remove, and which I even now tremble to look back upon. I appeared in this place as the representative of a poor, lowly, and obscure mechanic, known only, of course, to persons in equal obscurity with himself; yet, in his name and person, had to bear up against a pressure which no advocate in England ever before had to contend with, for the most favoured or powerful subject. I had to contend, in the first place, against the vast and extensive, but, after the verdict which has been given, I will not say the *crushing*, influence of the Crown. I had to struggle, from the very nature of the case, with that deep and solid interest which every good subject takes, and ought to take, in the life of the chief magistrate appointed to execute the laws, and whose safety is so inseparably connected with the general happiness, and the stability of the Government. I had further to contend with an interest more powerful and energetic—with that generous and benevolent interest, founded upon affection for the King's person, which has so long been, and, I trust, ever will remain, the characteristic of Englishmen. These prepossessions, just in themselves, but connected with dangerous partialities, would, *at any time*, have been sufficiently formidable; but at what season had I to contend with them? I had to contend with them when a cloud of prejudices covered every person whose name could be mentioned or thought of in the course of my defence—prejudices not only propagated by honest, though mistaken zeal, but fomented in other quarters by wickedness beyond the power of language to express—and all directed against the societies of which the prisoners were members; *only because they had presumed to do what those who prosecuted them had done before them in other times; and from the doing of which they had raised their fortunes, and acquired the very power to prosecute and to oppress.*

I had to contend, too, with all this in a most fearful season; when the light and humanity even of an English public was with no certainty to be reckoned on—when the face of the earth was drawn

* Mr. Gibbs, afterwards Sir Vicary Gibbs, the Attorney-General.

into convulsions—when bad men were trembling for what ought to follow, and good men for what ought not—and when all the principles of our free constitution, under the dominion of a delusive or wickedly infused terror, seemed to be trampled under foot. Gentlemen, when we reflect, however, upon the sound principles of the law of England, and the exalted history of its justice, I might, under other circumstances, have looked even those dangers in the face. There would have still remained that which is paramount to the ordinary law, and the corrector of its abuses;—there would still have remained that great tribunal, raised by the wisdom of our ancestors, for the support of the people's rights—that tribunal which has made the law itself, and which has given me *you* to look at—that tribunal which, from age to age, has been the champion of public liberty, and which has so long and so often been planted before it as a shield in the day of trouble. But looking to that quarter,—instead of this friendly shield of the subject, I found a sharp and destroying sword in the hand of an enemy: THE PROTECTING COMMONS WAS ITSELF THE ACCUSER OF MY CLIENT, AND ACTED AS A SOLICITOR TO PREPARE THE VERY BRIEFS FOR THE PROSECUTION. I am not making complaints, but stating the facts as they existed. The very briefs, I say, without which my learned friends (as they themselves agree) could not have travelled through the cause, were prepared by the Commons of Great Britain!—came before the jury stamped with all its influence and authority, preceded by proclamations and the publication of authoritative reports in every part of the kingdom, that the influence of the pre-judgment might be co-extensive with the island.

I had, therefore, to contend with an impeachment, without the justice belonging to such a proceeding. When a subject is impeached by the Commons of Great Britain, he is not tried by a jury of his country. Why? Because the benevolent institutions of our wise forefathers forbade it. They considered that, when the Commons were the accusers, the jury were the accusers also. They considered the Commons in Parliament, and the Commons at large, to be one and the same thing; though one would think, from the proceedings we are now engaged in, and everything connected with them, that they had no connection with one another; but that, on the contrary, the House of Commons was holding out a siege against its constituents, and supporting its authority against the privileges of the people, whose representatives they are and ought to be. Upon an impeachment, besides, the Lords in Parliament, upon the same principle, form a criminal court of justice for all the subjects of England. A common man is not *forced* before that high assembly, but *flies to it for refuge*; because, as Mr. Justice Blackstone well expresses it, all the rest of the nation is supposed, by the law, to be engaged in the prosecution of their representatives. But did the Lords in Parliament stand in that

situation in the case of the prisoners at this bar? Though not formally arraigned before the great men of the realm, could they look up to them for countenance and support? Gentlemen, the Lords united themselves with the Commons in the accusation, and, like the Commons, prejudged the cause by the publication of reports, which contain the whole mass of the criminating evidence.

I had, besides all this, to wade through a mass of matter beyond the reach of the human understanding to disentangle or comprehend, and which no strength of body could communicate, if understood; a situation so new and unparalleled in the criminal justice of the country, that the judges were obliged to make new experiments upon our legal constitution to invent the means of trial. I go along with the decision of the Court as to the adjournment, though I waive no privilege for my client; but what shall we say of a decision, which nothing but necessity could have justified, yet which starts up for the first time in the year 1794, after the constitution has endured for so many centuries, and which brings the judges of the land in consultation together, to consider how, by device, indulgence, or consent, or how, at last, by the compulsion of authority, they might be able to deal with a case, which had not only no parallel, but nothing even analogous to it in the records or traditions of our country?

I had, lastly, to contend with all that array of ability and learning which is now before me, though with this consolation, that the contention was with honourable men. It is the glory of the English Bar, that the integrity and independence of its members is no mean security of the subject.

When, in spite of all this mighty and seemingly insuperable pressure, I recollect that an humble and obscure individual was not merely acquitted, but delivered with triumph from the dangers which surrounded him; when I call to mind that his deliverance was sealed by a verdict, not obtained by cabal or legal artifice, but supported by principles which every man who has a heart in his bosom must approve, and which accordingly HAS obtained the most marked and public approbation; when I consider all this, it raises up a whirlwind of emotions in my mind, which none but He who rides upon the whirlwind could give utterance to express. In that season of danger, when I thought a combination of circumstances existed which no innocence could overcome, and having no strength of my own to rely on, I could only desire to place the jury under the protection of that benevolent Providence which has so long peculiarly watched over the fortunes of this favoured island. Sincerely, and from the bottom of my heart, I wished that a verdict should be given, such as a jury might look up to God, as well as around them to man, when they pronounced it. Gentlemen, that verdict is given, it is recorded; and the honour and justice of the

men who, as the instruments of Providence, pronounced it, are recorded, I trust, for ever along with it.

It may be said that this way of considering the subject is the result of a warm, enthusiastic temper, under the influence of a religious education, and it may be so; but there is another point of view in which men of all tempers, and however educated, must consider it. All men must agree in considering the decision as a great and solid advantage to the country, because they must see in it that our institutions are sound. All men must acknowledge that no event could be more fortunate than a public trial which has demonstrated that we hold our lives, and everything most dear to us, under a law which nothing can supersede, since there is little likelihood that men will desire to change a constitution which so thoroughly protects them. And before this cause is over, you will see that no man has ever had any such disposition.

Gentlemen, we now come to the *merits* of the cause itself; and though, if I were myself at the bar, instead of the honourable gentleman who is arraigned before you, I should be disposed to trouble you very little in my own defence, yet I mean to pursue no such course as the advocate of OTHERS. I say the advocate of OTHERS, for my client must forgive me if I almost lose sight of *him* in the determination of my duties. Indeed, I can hardly find him out in the mass of matter which has been read to you. One is obliged to search for him through the proceedings, and with difficulty can find his name; whilst others, to whom I owe a similar attention, and who stand behind for trial, are undoubtedly implicated in part of that which has been fruitlessly read against HIM. It is this alone which obliges me at all to consider the quality of the transactions before you, and to apply them to the law, lest assumed facts and erroneous doctrines should meet me at *another* time, and in *another* character, touching in their consequences the safety of the other prisoners, and of the whole people of this land.

The first thing we have to consider in this, as in all other trials, is the nature of the accusation. What are we here about? For, to say the truth, it is a little difficult at first view to find it out. It is the glory of the English law that it requires, even in the commonest cases (*a fortiori* in a case of blood), the utmost precision of charge, and a proof correspondingly precise;—hitting the bird in the very eye; strictly conformable, not merely to the substance of the crime, but to the accusing *letter*.

Let us see, therefore, what the charge is.

When I had the honour to discuss this subject before, it was to another jury, and indeed to another Court; for I now see on the bench an honourable and learned Judge who was not then present. Some of *you* also, gentlemen, most probably were in the way of hearing, and of receiving an impression from the able address of the Attorney-General, in the introduction of Mr. Hardy's trial. You

were bound to be present in court when the jury was called, and it is not to be supposed that, after having discharged on that day your duty to the public by a painful attendance while the case was opened, you would continue it in order to hear the defence, with which you had no manner of concern. If you come, therefore, with any bias upon your minds from the situation you were placed in by your duties, it *must* be a bias against *me*; for you heard everything on one side, and nothing upon the other: it becomes my duty, therefore, to go over again the same arguments which I employed before, though some of you are not yet recovered from the fatigue of attending to them. Nor is the task less nauseous to myself; but, irksome as it is, it must be performed. I am not placed here to establish a reputation for speaking, or to amuse others with the novelty of discourse; but to defend innocence, and to maintain the liberties of my country.

Gentlemen, the charge is this:—

The indictment states, “That all the prisoners” (whose names I shall hereafter enumerate when I come to remark upon the evidence), “intending to excite insurrection, rebellion, and war against the King, and to subvert the rule and government of the kingdom, and to depose the King from his royal state and government of the kingdom, and to bring and put the King to death, maliciously and traitorously, and with force, did, among themselves, and together with other false traitors, conspire, compass, and imagine, to excite insurrection, rebellion, and war, against the King, and to subvert the legislature, rule, and government of the kingdom, and to depose the King from the royal state and government of the kingdom, AND TO BRING AND PUT OUR SAID LORD THE KING TO DEATH.” This is the whole charge. But as it is an offence which has its seat in the heart, the treason being complete by the unconsummated intention, it is enacted by positive statute, and was, indeed, the ancient practice upon the general principles of English law, that he who is accused of this crime, which consists in the invisible operations of the mind, should have it distinctly disclosed to him upon the same records, what acts the Crown intends to establish upon the trial as indicative of the treason; which acts do not constitute the crime, but are charged upon the record as the means employed by the prisoner to accomplish the intention against the king’s life, which is the treason under the first branch of the statute.

The record, therefore, goes on to charge, that, “in order to fulfil, perfect, and bring to effect their most evil and treasonable compassings and imaginations” (that is to say, the compassings and imaginations antecedently averred, viz., to bring and put the King to death), “they met, consulted, conspired, and agreed among themselves, and others to the jurors unknown, to cause and procure a convention and meeting of divers subjects of the realm, to

be held and assembled within this kingdom." Now, in order to elucidate the true essence of this anomalous crime, and to prevent the possibility of confounding the treason with the OVERT ACT, which is only charged as the manifestation of it, let us pause here a little and see what would have been the consequence if the charge had finished here, without further connecting the OVERT ACT with the TREASON, by directly charging the convention to have been assembled FOR THE PURPOSE OF BRINGING THE KING TO DEATH. I shall not be put to argue that no proceedings could have been had upon such a defective indictment, since common sense must inform the most unlettered mind, that merely to hold a convention of the people, which might be for VARIOUS PURPOSES, without alleging for WHAT PURPOSE it was assembled, would not only not amount to high treason, but to NO CRIME WHATSOEVER. The indictment, therefore, of necessity, proceeds to aver that "they conspired to hold this convention WITH INTENT, and in order that the persons so to be assembled at such convention and meeting should and might, wickedly and traitorously, without and in defiance of the authority, and against the will, of the Parliament of this kingdom, subvert and alter, and cause to be subverted and altered, the legislature, rule, and government of the kingdom." What, then, is the charge in this first count of the indictment when its members are connected together and taken as one whole? It is, that the prisoner conspired and confederated with others to subvert the rule and government of the kingdom, and to depose the King, and to BRING AND PUT HIM TO DEATH, which last of the three is the only essential charge; for I shall not be put to argue that the indictment would have been equally complete without the two former, and wholly and radically defective without the latter, since it has been, and will again be conceded to me, THAT THE COMPASSING THE KING'S DEATH IS THE GIST OF THE INDICTMENT, WHICH NOTHING CAN ADD TO, AND THE OMISSION OF WHICH NOTHING CAN SUPPLY. The indictment, therefore, having charged the traitorous compassing, proceeds, in conformity to the statute, to state the act charged to have been committed in fulfilment of it, which, you observe, is not an armed assembly to seize and destroy at once the person of the King, but a conspiracy to effect the same purpose through the medium of a convention. The indictment, therefore, charges their design to assemble this convention, not as a meeting to petition for the reform of Parliament, or to deliberate upon the grievances of the country, but with the fixed and rooted *intent in the mind*, that this convention, when got together, whatever might be its external pretext, should depose the King, AND PUT HIM TO DEATH. It is impossible, therefore, to separate the members of this charge without destroying its whole existence, because the charge of the compassing would be utterly void without the overt act which the statute requires to be charged as the means employed by the

prisoner to accomplish it, because no other acts can be resorted to for its establishment, and because the overt act would be equally nugatory if separated from the compassing; SINCE THE OVERT ACT DOES NOT SUBSTANTIVELY CONSTITUTE THE TREASON WHEN SEPARATED FROM THE TRAITOROUS PURPOSE OF THE MIND WHICH PRODUCED IT, BUT IS ONLY THE VISIBLE MANIFESTATION OF THE TRAITOROUS INTENTION, WHICH IS ADMITTED ON ALL HANDS TO BE THE CRIME. Your office, therefore, gentlemen—(*I defy the wit, or wisdom, or artifice of man to remove me from the position*)—your office is to try whether the record, inseparable as I have shown it to be in its members, BE TRUE OR FALSE, or to sum up its contents in a word, *whether the prisoner conspired, with others, to hold a convention or meeting, with the design that, under the mask of reform of Parliament, it should depose the King from his royal office, and DESTROY HIS LIFE.*

There are several other overt acts charged in the indictment, to which, however, you will see at a glance that the same principle will uniformly apply. Since the compassing the death of the King is alike the charge in all of them, the overt acts only differing from one another as the indictment charges different acts connected with the assembling of this convention; such as *how* it was to be held, *who* were to form committees for projecting its meeting, and so on, which I do not particularise just now, because I shall have occasion to consider them distinctly when I come to the particulars of the evidence. There is one of the counts, however, that has been so strongly relied on in argument, and to which so large a portion of the evidence has been thought to apply, that it is necessary, in this place, to attend to its structure. I mean the count which charges the circulation of papers. We have heard a great many of them read, and they will be a lesson to me never again to destroy old newspapers as useless wrappings, but to treasure them up as precious *manuscripts* for the discovery of plots and secrets of conspirators; for, with a very few exceptions, the whole of the written evidence—by which so deep-laid and detestable a conspiracy is supposed to have been developed by the seizure of the persons and correspondences of traitors—has been to be found, for two years past, upon the public file of every common newspaper, and retailed over and over again in every town and country magazine in the kingdom; and that too with the implied consent of His Majesty's Attorney-General, who could not help seeing them, yet who never thought of prosecuting any man for their publication. Yet these said old newspapers have been on a sudden collected together, and their circulation charged as an overt act of high treason against the honourable gentleman before you; although with a very few and perfectly harmless exceptions, it has not been shown that he either *wrote* them, or *published* them, or *read* them, or even *knew* of their existence.

But supposing him to have been the author of all the volumes which have been read, let us examine how they are charged, in order to erect their circulation into treason.

The indictment states, that "further to fulfil their traitorous intention *as aforesaid*" (*referring to the antecedent charge of compassing in the former count*), "they maliciously and traitorously did compose and write, and caused to be composed and written, divers books, pamphlets, letters, and instructions, purporting, and containing therein, amongst other things, encouragements and exhortations to move, induce, and persuade the subjects of our said lord the King to choose, depute, and send, and cause to be chosen, deputed, and sent, persons as delegates to compose and constitute such convention *as aforesaid*, with the traitorous purposes *aforesaid*, *which is agreed to be a reference to the traitorous purposes enumerated in the antecedent part of the indictment*. Here, therefore, let us pause again, to review the substance of this accusation.

The charge, you observe, is NOT the writing of a libel or libels, or for their publication or circulation; but their composition and circulation to effect the *premeditated, preconcerted treason against the King's life*. This *intention*, in their circulation, was accordingly considered by the Court most distinctly and correctly, not only in the charge to the grand jury, but upon the former trial, as the merest matter of fact which could possibly be put upon parchment totally disentangled from every legal qualification. We are not, therefore, examining whether these papers which have been read, or any of them, are *libels*, but whether (whatever may be their criminal or illegal qualities) they were written and circulated by men who, having predetermined in their wicked imaginations, to depose and put to death the King, wrote and published them to excite others to aid them in the accomplishment of that detestable and traitorous conspiracy.

There is another overt act, in which the publication of the same papers is charged, which I only read to you to show the uniform application of the principle which obviously pervades every branch and member of the indictment. It states, that "the prisoners, in further fulfilment of the treason *aforesaid*" (*i.e., by reference, the treason of PUTTING THE KING TO DEATH*), "and in order the more readily and effectually to assemble such convention and meeting as *aforesaid*, for the traitorous purposes *aforesaid*" (*i.e., by reference, the traitorous purpose against the life of the King*), "they composed, and caused to be composed, divers books, pamphlets, &c., purporting and containing, amongst other things, incitements, encouragements, and exhortations to move, induce, and persuade the subjects of our said lord the King to choose, depute, and send, and cause to be chosen, deputed, and sent, persons as delegates to compose such convention and meeting as *aforesaid*, to aid and assist in carrying into effect such traitorous, subversive alteration

and deposition as last aforesaid." So that *this* charge differs in nothing from the *former*. For it is not that criminal pamphlets were published, but that they who published them, having wickedly and maliciously conceived in their minds and set on foot a conspiracy wholly to overthrow and subvert the Government, to depose and *to put to death the King*, published them for the express purpose of exciting others to join them in the accomplishment of their treason. It does not charge the publication of libellous matter, which, peradventure, or even in all probability, might excite others to *originate* such a conspiracy, but directly charges the criminal purpose of exciting others to assist in the accomplishment of one already hatched in the mind and intention of the prisoner.

Gentlemen, I should not further enlarge upon matter which appears to be so self-evident, more especially as I perceive that I have the assent of the Court to the meaning and construction of the indictment as I have stated it, were it not that on the former trial it was directly questioned by the Solicitor-General, in an argument which I cannot possibly reconcile with any one principle or precedent of English law. I am persuaded that he will not consider this observation as a personal attack upon his integrity, or any depreciation of his professional learning, for both of which I have always had a great respect. The truth is, when the mind has long been engaged upon a particular subject, and has happened to look at it in a particular point of view, it is its natural infirmity to draw into the vortex of its own ideas whatever it can lay hold of, however unsuited to their support. I cannot account upon any other principle for the doctrine maintained by so very learned a person, in his late reply in this place—a doctrine so extraordinary that I would not venture to quote it from my own memory, and which I shall, therefore, read to you from the note I have been furnished with by my learned friend who sits near me *—a doctrine which I am persuaded the Solicitor-General would not, upon reflection, re-maintain to be the law; and which, if it were the law, I would not live in the country longer than to finish my address to you. He says roundly, that the law upon this subject is perfectly clear—namely, that any act done (attend, I beseech you, to the expression), "that any act done which *may* endanger the life of the King is, in the judgment of the law, an act done in pursuance of an intent to compass his death; that the act is, in point of law, demonstrative of the purpose, and constitutes the crime of high treason; that the imagination of personal harm to the King forms no part of it; and that it is not material whether the person charged had in contemplation the consequences that might follow from what he did, it being sufficient, independently of all intention, if the death of the King was a *probable consequence* of what he was about to do."

* Mr. Gurney.

Gentlemen, one hardly knows where one is after reading so strange and confounding a proposition. The argument, in short, is neither more nor less than this:—That if I do an act, though with the most innocent mind, and without contemplating that any danger can possibly touch the King; nay, more, if from a mistaken zeal I do an act from which the jury are convinced that I honestly conceived his person would be safer and his reign more secure and illustrious; yet, *if not in the event*, but only in the *opinion of lawyers*, my conduct led to the direct contrary consequence, I am to be adjudged in law a compasser of the King's death—I am to be found, in point of law, *to have intended what I never thought of*, and a jury, whose province is to declare the FACT, is to be bound in conscience to find me guilty of designing the King's death, though their consciences inform them, from the whole evidence, that I sought nothing but the health of his person and the honour of his crown. Gentlemen, this is such a monstrous, horrible proposition, that I would rather, at the end of all these causes, when I had finished my duty to their unfortunate objects, die upon my knees, thanking God that, for the protection of innocence, and the safety of my country, I had been made the instrument of denying and reprobating it, than live to the age of Methusalem for letting it pass unexposed and unrebuked.

It may be curious to examine to what conclusions this doctrine of a lawyer's speculation upon probable consequences, shutting out the examination of actual intention, might lead. It is part of the evidence before you against the honourable gentleman at your bar, that a proposition was made to and adopted by the Constitutional Society to send a delegate to the convention at Edinburgh; and you have been desired, from this measure and others of a similar bearing, to find an intention to destroy the King, from the probable consequence of such proceedings. Let us try the validity of this logic. The Society of the Friends of the People (some of whose proceedings are in evidence) had a similar proposition made to them to send a delegate to this same convention, and the measure was only rejected after a considerable degree of debate. Suppose, then, on the contrary, they had agreed to send one, and that I, who am now speaking to you, had been of the number who consented, I should then have been in a worse predicament than my client, who appears to have opposed it. I should have been found to have consented to an act, which, *according to some legal casuists*, had a tendency to destroy the King; and although my life was laboriously devoted to the duties of my profession, which cut me off from attending to the particular conduct of reformers, though approving of their general and avowed object, Mr. Yorke's speech at Sheffield, and all the matter besides which has consumed our time and patience for three

days past, would have been read to establish my conspiracy with people whom I never saw or heard of in the course of my existence. It is, besides, equally high treason to compass and imagine the death of the heir-apparent as the death of the King; and if the nature of the conspiracy was to reach the King's life, by subverting the Government, its subversion would lead as directly, in its consequence, to the destruction of his successor, and consequently would, upon the acknowledged principles of law, be a compassing of the death of the Prince of Wales. See then to what monstrous conclusions it would lead, if an act could be considered as legally conclusive of an intention, instead of examining it with the eye of reason, and as a fact, from the circumstances attending it. It so happened that at this very time, and though a member of this society of reformers, I was Attorney-General to the Prince, sworn of his Privy Council, high in his personal confidence, and full of that affection for him which I yet retain. Would it have been said, gentlemen (I am not seeking credit with you for my integrity), but would it have been said without ridicule, that a man, placed as I was in a high situation about the heir-apparent of the Crown, who had at once the will and the privilege to reward my services, that I, who was serving him at the very moment in terms of confidence and regard, was to be taken conclusively, *as a judgment of abstract law*, to be plotting his political destruction, and his natural death?

This doctrine, so absurd and irrational, does not appear to me to be supported by anything like legal authority.

In the first place, let it be recollected that this is an indictment on a statute, and not upon the common law, which has the precedents made by judges for its foundation. The rule of action here depends upon a WRITTEN, UNALTERABLE record, enacted by the legislature of the kingdom for the protection of the subject's life, and which the judges upon the bench have no right to transgress or alter a letter of, because other judges may have done so before them. As far as the law stands upon tradition, it is made by the precedents of judges, and there is no other evidence of its existence; but A STATUTE is ever present to speak for itself, in all courts, and in all ages. And I say with certainty—speaking in my own name and person, and desiring to stand or fall as a professional man by what I utter—that the law is as I maintained it upon the trial of Thomas Hardy, and as I maintain it now. I admit that a statute, like the common law, must receive a judicial interpretation; and that, wherever the letter of an Act of Parliament is ambiguous, the constructions which have been first put upon it, if rational, ought to continue to be the rule. But where a statute is expressed in such plain, unambiguous terms, that but one grammatical or rational construction can be put upon it; when the first departure from that only con-

struction does not appear to have taken its rise from any supposed ambiguity of its expression in the minds of those who first departed from it—which is the general history of constructive departures from written laws—but comes down tainted with the most degraded profligacy of judges notoriously devoted to arbitrary and corrupt governments; when the very writers and judges whose writings and decisions first supported such original misconstructions, honestly admit them to be misconstructions, and lament and reprobate their introduction; when the same lamentation and reprobation of them is handed down from commentator to commentator, and from court to court, through the whole series of constructive judgments; and lastly, when Parliament itself, in different ages, as the evil became intolerable, has swept them all away; when, to avoid the introduction of new difficulties, it has cautiously left the old letter of the statute standing to speak for itself, without any other commentary than the destruction of every one that ever had been made upon it and the reversal of every judgment which ever had departed from its letter, concluding with the positive prohibition, in all future time, of the one and of the other;—in such a case, I do maintain, and, as an English lawyer, feel myself bound for the public safety to declare, in opposition to whatever authorities may be found to the contrary, that if the statute of Edward the Third can be departed from by construction, or can be judged otherwise THAN IF IT HAD PASSED YESTERDAY, there is, properly speaking, no such thing as written law in England.

Gentlemen, you will find me justified in what I say by the language of the statute itself, which is clear and unambiguous, and by the declarations of its genuine meaning by subsequent Parliaments.

The words of the statute of the 25th of Edward the Third are these:—

“Whereas divers opinions have been before this time, in what case treason shall be said, and what not—the King, at the request of the Lords and Commons, has made a declaration as hereinafter followeth:—

“When a man doth compass or imagine the death of our Lord the King, or of our Lady his Queen, or of their eldest son and heir; or if a man do levy war against the KING in his realm, or be adherent to the King’s enemies in his realm, giving them aid and comfort, and thereof be provably attainted of open deed by people of their condition.”

The reason of passing it, as expressed by the act itself, and by Lord Hale and Lord Coke in their Commentaries, demonstrates the illegality of any departure from its *letter*; because it was passed to give *certainity* to a crime which, by *judicial constructions*, had before become *uncertain*. Lord Hale says, “That at

common law there was a great latitude used in raising offences to the crime and punishment of treason, by way of interpretation and arbitrary construction, which brought in great uncertainty and confusion. Thus, accroaching of royal power was a usual charge of treason anciently, though a very uncertain charge; so that no man could tell what it was, or what defence to make to it." He then proceeds to state various instances of cruelty and vexation, and concludes with this observation:—

"By these, and the like instances that might be given, it appears how arbitrary and uncertain the law of treason was BEFORE THE STATUTE of the 25th of Edward the Third, whereby it came to pass that almost every offence that was, or seemed to be, a breach of faith or allegiance, was, by *construction*, and *consequence*, and *interpretation*, raised into the offence of high treason."

To put an end to these evils, therefore, and to give to the harassed subjects of England security and peace, this sacred law was made; but for a season with very little effect, because wicked judges still broke in upon its protecting letter by arbitrary constructions, insomuch that Lord Hale observes, that although the statute of Edward the Third had expressly directed that nothing should be declared to be treason but cases within its enacting letter—"yet that things were so carried by parties and factions in the succeeding reign of Richard the Second that it was little observed; but as this or that party got the better, so the crime of high treason was in a manner arbitrarily imposed and adjudged, which by various vicissitudes and revolutions mischiefed all parties, first or last, and left a great inquietude and unsettledness in the minds of the people, and was one of the occasions of the unhappiness of that King."

All these mischiefs, he further observes, arose from breaking the great boundary of treason by a departure from the LETTER of the statute, which was so great a snare to the subject that after many temporary Acts of Parliament passed and repealed, and many vexatious and illegal judgments clashing with, and contradicting one another, the statute of Queen Mary was at last enacted, which swept them all away; and, as Lord Coke observes in his Commentary upon it, in the Second Institute, not only set up again the very letter of the statute of the 25th of Edward the Third, but repealed all judicial interpretations past, and prohibited all recurrence to them in future.

I will give it you in his own words:—"In this statute of Mary two things are to be observed: First, That the word expressed in the statute of Mary excludes all implications or inferences whatsoever; Secondly, That no former attainder, *judgment*, *precedent*, *resolution*, or *opinion* of judges or justices, of high treason, other than such as are specified and expressed in the statute of Edward the Third, are to be followed or drawn into example. FOR THE WORDS BE PLAIN AND DIRECT—That from henceforth no act, deed,

or offence, shall be taken, had, deemed, or adjudged to be high treason, but only such as are declared and expressed in the said Act of the 25th of Edward the Third, any Act of Parliament or statute after the 25th of Edward the Third, or any other declaration or matter to the contrary notwithstanding."

I do, therefore, maintain that the statute of King Edward the Third, plain in itself, and rendered still more so by the Parliamentary exposition of the Act of Queen Mary, is a **PEREMPTORY RULE**, and that no appeal can be had upon the subject to any writers or decisions, whatever may be the reputation of the one or the authority of the other.

I find nothing, however, in any writer of character, or in any decision, which deserves the name of authority, to which such an appeal could successfully be made. Lord Hale nowhere says that a conspiracy to subvert the *Government*, or any rebellion pointed merely at the King's *royal authority*, is high treason within this branch of the statute. He uniformly considers the crime as a design against the King's **NATURAL LIFE**; and treats nothing even as an overt act of it that is not so pointed against the King's **PERSON** as to be legal evidence of a conspiracy against his **EXISTENCE**. "If men," says Hale, "conspire the *DEATH of the King*, and thereupon provide weapons, or send letters in the execution of it, this is an overt act within this statute." Undoubtedly it is—but mark the principle, and attend to Lord Hale's language, which is plainly this:—if men conspire the **DEATH** of the King, and do these things in execution of the conspiracy, the things so done are *legal evidences* of the treason; but the treason, which is the intention of the mind against the King's life, must first exist before any step could be taken in pursuance of it.

Another passage in Lord Hale upon which the whole argument against us appears in a manner to be built, is in my mind equally clear and perfectly consistent with the letter of the statute:—

"If men conspire to imprison the King **BY FORCE AND A STRONG HAND** until he has yielded to certain demands, and for that purpose gather company, or write letters, that is an overt act to prove the compassing the King's death; for it is in effect to depose him of his kingly government, and was so adjudged by all the judges in Lord Cobham's case."

Here you observe that the conspiracy, even to imprison the King, is not stated as a substantive act of treason, independently of a design against his **LIFE**, but only as an overt act to prove the compassing of his **DEATH**; and so far was Hale from considering that constructive attempts upon the King's *government or authority*, without direct force pointed against his *person*, could even be offered as evidence to support an indictment for compassing his death, that he seems anxious to prevent the reader from running to such a conclusion; for he immediately afterwards says: "But then this

must be intended of a conspiracy *forcibly* to detain and imprison the King."

Gentlemen, I have only troubled you with these observations to prevent anything which has been offered as evidence upon this trial from being at all confounded in your minds as connected with the charge. We have indeed attempted nothing against the King's *government*; but leaving that still to be the question, there is not a tittle in the whole body of the proof which has any, the remotest, relation to any conspiracy to *seize* the King or to *depose him*, which alone could support the charge of compassing the King's death; for the indictment itself does not point even to any conspiracy to depose the King directly by force against his person, but only constructively, through the medium of a subversion of the Government.

Gentlemen, the charge, therefore, which the Crown seeks to bring home to us—not only as it is to be collected from the indictment, but as it is explicitly pointed by the argument—is this: That a design was formed to call a convention of the nation, and that the prisoner at the bar was engaged in it; that he consulted with others for the appointment of committees of co-operation and conference, consisting of the persons now in prison, who were delegated by the two great London societies at the head of the conspiracy; and that the convention which was to be assembled as the result of this confederacy was to destroy by force the legal government of the country, and to form itself into a legislature for the nation: thereby superseding not only the functions of the three branches of Parliament, but the executive authority of the Crown—that this, and this alone, was the secret object of all these societies, though covered with popular pretexts of restoring the constitution, until their machinations should be sufficiently ripe to throw off the veil, to avow their principles, and to establish them by force: that this, therefore, amounted to a conspiracy to depose the King, which was an overt act of high treason for compassing his death.

Gentlemen, I am sure I have done justice to the Crown in my statement of its proposition; and I will be equally just in my answer to it. For I admit that if the Attorney-General satisfies you *upon the fact* that this proposition is true, he gives you evidence from whence it ought to be left for your very serious judgment whether those who were engaged in a conspiracy to usurp the King's authority might not be reasonably supposed to have also contemplated his destruction, which was so likely to follow from the annihilation of his office. I desire it may be remembered that I have never denied, either now or upon the former trial, that the destruction of the King's natural life was not a probable consequence of a forcible coercion of his person for the extinction of his authority; nor that an act done with deliberation, leading to a mainly probable consequence, is not good EVIDENCE of the intention

to produce that consequence. My whole argument has only been, and still is, that the intention against the King's life is the crime; that its existence is matter of fact, and not matter of law; and that it must, therefore, be collected by you, the jury, instead of being made the abstract result of a legal proposition, from any fact which does not directly embrace and comprehend the intention which constitutes the treason.

But that this is the law of England, and the law immediately applicable to the present question, fortunately does not depend upon any argument of mine, nor upon any appeals I have made to the authoritative writings of the sages of the profession. I have a much better security for my purpose—the security that what his Lordship, who is to assist you in your deliberations, has said upon one occasion, he will say upon another. I have the express and direct authority of Lord Chief-Justice Eyre, in that part of his charge to the grand jury, where he laid before them the very matter we are now engaged in for their consideration. “If,” says his Lordship, “there be ground to consider the professed purpose of any of these associations, a reform in Parliament, as mere colour, and as a pretext held out in order to cover deeper designs, designs against the whole constitution and government of the country, the case of those embarked in such designs is that which I have already considered. Whether this be so or not, is **MERE MATTER OF FACT**; as to which I shall only remind you, that an inquiry into a charge of this nature, which undertakes to make out that the ostensible purpose is a mere veil, under which is concealed a traitorous conspiracy, requires cool and deliberate examination, and the most attentive consideration; and that the result should be *perfectly clear and satisfactory*. In the affairs of common life, no man is justified in imputing to another a meaning contrary to what he himself expresses, but upon the fullest evidence.” This the learned Judge lays down with the greatest propriety as a general rule of evidence, applicable to all cases, and therefore most emphatically applicable to high treason, where the prisoner is not to be criminated by conjectures, and inferences, or strains of wit, but provably attainted, according to the language of the statute. It must be remembered, too, that this sound and salutary doctrine was not delivered by the Court as an *abstract proposition*, but the application of it was *directly pointed to the occasion*, and given to the grand jury as a standard to direct their judgments *in the very matter before us*. The cause therefore is brought beyond the power of invasion or controversy, to one short point, disentangled from all ambiguity or legal distinction, since, upon the express authority of the Court which sits to try the prisoner, independently of all other authorities, it is a mere naked question of *fact* which you are to examine: there is nothing which can affect him *legally*, or which, it is even contended, can affect him, unless you are prepared to say, upon your oaths, in the presence of God

and your country, that you have materials in evidence before you; from whence you feel yourselves bound in conscience to pronounce that the parties who engaged in the proposition of holding a convention did NOT engage in it according to their professions to collect the public opinion upon the subject of national abuses, and for the consideration of constitutional redress, but for the direct though concealed purpose of resisting, BY FORCE, the authority of Parliament. I repeat the expression—of resisting BY FORCE, the authority of Parliament, and assuming to themselves the control and dominion of the nation. THIS IS THE FACT TO BE MADE OUT, AND THE BURDEN OF THE PROOF IS UPON THE CROWN. I do not stand here to disprove; but to examine what has been proved; and I confess myself, therefore, to be utterly at a loss how to pursue my discourse—for you have heard nothing upon which you would pull a feather out of a sparrow's wing. There is not only no evidence upon which reasonable men might deliberate between a verdict of Guilty or Not Guilty, but literally NO EVIDENCE AT ALL; nothing that I could address myself to, but through the medium of ridicule, which, much as it would apply to the occasion in other respects, it would be indecent to indulge in upon a great State trial, so deeply concerning the dignity of the country, and so seriously affecting the unfortunate persons whom I shall be called upon to defend hereafter.

Let not, however, this condition of a prosecution, commenced under such exalted auspices, depend upon my single assertion, but let it be brought to the test of examination.

The Attorney-General contends that he has made out PROVABLY—i.e., without the possibility of a reasonable doubt—that this convention was projected for the detestable purpose charged by the indictment; and that their avowed objects were nothing but a surface of colour and deceit. He says, that two societies were set on foot in this town for these traitorous objects; that one of them (the Constitutional Society) was instituted by Mr. Tooke, and that he organised and superintended the others; that he prepared their resolutions; that he superintended their correspondence with similar societies, which were established at Sheffield, Manchester, Birmingham, Edinburgh, Perth, and most of the populous towns in both parts of Great Britain; and that the whole body of their communications with one another manifested their design against the very being of the Government. This is the proposition: but has he proved it, or any part of it? I answer, He has not. In the first place, did Mr. Tooke set on foot the Constitutional Society? I answer again, He did not. It was instituted by a most worthy and honourable person, who will be called before you as a witness, if you shall not think your time misspent in hearing evidence where nothing has been proved: it was instituted by Major Cartwright, a man as much attached to the constitution of his country, and as enlightened to understand it, as any one who hears me, whatever

may be his station. This assertion is not made from the instructions of a brief; I speak from my own knowledge of the man. Major Cartwright, who began that institution, continued to be a member of it during the progress of its proceedings arraigned before you: he is a member of it now; and he will tell you that he shall continue to be one, notwithstanding his prosecution, until its objects are accomplished.

The Constitutional Society was instituted by this gentleman for the object which it has uniformly professed and adhered to, an object which it pursued in common with some of the greatest and wisest men which this country has for ages produced. It was instituted to produce, if possible, by the progressive influence of public opinion, a reform in THE COMMONS' HOUSE OF PARLIAMENT; a measure certainly not originated by Major Cartwright, but forced by the corruptions of Parliament itself, and the consequent calamities of our country, upon the attention of every enlightened statesman during the present reign. The father of the present Minister uniformly and publicly imputed the calamities of Great Britain to this fatal source. The succession of destructive wars, without a national object; the rash and improvident expenditure of public money; the ravages upon the constitution by the influence of the Crown—were all of them ascribed by this great statesman to the loss of that control in the people over the proceedings of Parliament which they were entitled to by the ancient principles of the constitution. The great Earl of Chatham was one of the first persons who called the attention of the public to the absolute necessity of a reform in Parliament to redeem the nation from ruin; it was the great feature of his life, and the foundation of his fame.

As the avowed objects of the society were thus originated and countenanced by persons of the highest station, let us see whether it was instituted for the perversion of these principles by obscure and necessitous men. Gentlemen, the contrary is most notorious; and it may be established by referring to the names of the original members. The Duke of Richmond was one of the earliest; and he pushed the principle and the practice of reformation very much further than Mr. Tooke has ever been disposed to follow him—a fact which I promise to establish by the uniform tenor of his life. Mr. Tooke considered the disposition of the popular franchise of election as matter of expediency in Government, and to be moulded by Parliament in its discretion for the attainment of constitutional freedom; the Duke, on the other hand, considered universal suffrage to be an inherent privilege of the people, to be CLAIMED by men AS OF RIGHT, and not yielded to them as an indulgence. It is not to be wondered at, therefore, that his Grace's doctrines should acquire the ascendancy; since independently of his illustrious patronage, they were more flattering, and better calculated for a rapid progress. I agree with the Duke of Richmond that there exists in the people

of England, as in every people, an inherent right to be governed according to the universal assent of the community; but I think that the people would judge weakly for themselves by desiring their representatives to carry forward to the Crown, for its ratification; the system of **UNIVERSAL** suffrage. Yet, while I say this, as Mr. Tooke's sentiments, and as my own, I confess, at the same time, that the arguments by which the Duke of Richmond supported his system, and which has been uniformly followed by all the other prisoners, were not calculated to impose upon the ignorant, but are well worthy of attention and consideration from the wise. The Duke's argument was of this sort (I do not profess to adopt the very phrase): "When it is conceded," says his Grace, "that *some* reform of Parliament is indispensably necessary for the safety of the country, *who* is to ensure a reform that will give general satisfaction, and produce obedience and stability? If you go to a given extent, founded upon principles of expediency, others, upon the same principles, will seek to push it to an extent still further, and others to an extent beyond that; so that reformation, however pure the design of its author, instead of giving firmness and vigour to Government, would only be the parent of discontent." This was the difficulty which occurred to the Duke; and out of it he saw no road, as he himself expresses it, but a reform upon principle, which grants nothing from expediency or favour, "**BUT WHICH GIVES TO EVERY MAN HIS OWN.**" These were his Grace's doctrines, as I shall read them presently from the work which he acknowledged in the course of his former evidence, and which appears, throughout the whole cause, to have been **THE VERY SCRIPTURE OF ALL THESE SOCIETIES**. These, I doubt not, are his Grace's opinions still; for though a man may change his sentiments in matters which depend upon policy and expediency—though he may think it prudent to grant at one time that which further reflection may suggest to be unwise to be granted, yet no honest man can change his mind as to the propriety of giving to every man what he believes and acknowledges to be his own. But the Duke of Richmond's opinions are not the question: it is sufficient for me, that when these opinions were published, and for a long time insisted on by this intelligent and illustrious person, no man living thought of imputing, or can now reasonably impute, to him a design to overturn the constitution, or to enervate its functions. Yet you are now called upon to devote to infamy and death the gentleman whom I am defending, not indeed for treading in the Duke of Richmond's steps—not indeed for adopting the plan of universal suffrage, or for following it up by the same means which the Duke has recommended,—but for shrinking to a plan far more restrained and moderate, and declining even to effect that system of moderation by the procedure which the Duke both inculcated **AND PRACTISED**.

But it seems all these doctrines and proceedings are but *colour*

and deceit, manifested by the discipline and regularity of their siege against the character and authority of Government. The conspirators sat, it seems, by *delegated authority*, from multitudes too large for consultation. They did so, certainly; still pursuing the example, in form as well as in substance, of the highest men in the kingdom, among whom, by the by, are to be found many of the members of that Government which has levied this prosecution. I will prove to you (for I have now in court some of the first and most honourable men in the kingdom to prove it), that in the year 1780 the very same plan of delegation from large bodies was adopted, and for the identical object of correcting, by the formidable engine of public discountenance and censure, the improvident expenditure of public money, wrung from the people by corrupt influence in the House of Commons. I will prove that, for the express and avowed purpose of reforming the Government of the kingdom, these honourable persons, who were never accused or suspected of treason, sat in convention in the Guildhall of the city of London; delegates for different districts were appointed, some of whom are now in my eye; and you will find in short that no one step, in form or in substance, has been taken by the unfortunate persons who are now the subjects of this prosecution, that were not taken, and in my opinion legally and constitutionally taken, by their superiors, whose examples they have followed. Let my expressions be properly understood. I stand upon a great theatre, and should be sorry to say anything which I can have occasion to recall. Let it be recollected that I am not defending *all the papers* which have been read. Some of them are rash and absurd in the extreme; many of them are indecent; many of them clash with one another, which is not surprising, since they were written by persons of various descriptions, who had no communication with one another. But that is not the question. The question is, *What were the objects of these societies, from the result of the whole evidence?* These papers are not prosecuted as libels, but are charged to have been written *with the intention* to promote a convention to supersede and assume the Government. But will any honest man say that he can collect from these writings, *taken in a mass*, and as indicative of the pursuits of their authors, any such intention or system? On the contrary, it is impossible to listen to them with common candour and attention, without observing that the needle is not truer to the pole, though, when it is disturbed and agitated, it oscillates round the point of its attraction, than these poor people were to the promotion of reform in **THE COMMONS' HOUSE OF PARLIAMENT**, by collecting the sense of the people on the subject; conscious that, though Parliament, as the Duke of Richmond expresses it, would not *spontaneously* yield what those who sway it have a corrupt interest in refusing, yet that it might be obtained by that which must, and will in the end, obtain every-

thing from any Government, however constituted—the slow, gradual, and progressive effect of public opinion. This was their object; and I do maintain here, in my own person, that it is the privilege of Englishmen so to collect the opinion of the country, and that it is the duty of Parliament, nay, its very use and office in the State, to attend to and to give effect to the opinions so collected. An eminent person, whose writings I have often had occasion to cite, expresses this sentiment with admirable justness and force,—“The virtue, spirit, and essence of the House of Commons consists in its being the express image of the feelings of the nation. It was not instituted to be a control upon the people, as of late has been taught by a doctrine of the most pernicious tendency, but was designed as a control for the people. It was supposed originally to be *no part of the standing Government of this country*; but was considered as a *control* upon it, issuing *immediately* from the great body of the people, and speedily to be resolved into the mass from whence it arose.”

To bring back the House of Commons to this genuine office and character, by fixing the public attention to its departure from it, was the obvious drift of all the proceedings of the societies, as they are fairly to be collected from the evidence. Undoubtedly there are among the papers strong invectives against unbridled monarchies, because they were written while monarchs, having no law but their unbridled ambitions, were laying waste the liberties of the world. There are, I admit, strong censures upon those corruptions which have embarked this country in a system (as they thought it) of tyranny and injustice; but there is nothing in them which touches the King of Great Britain's majesty or office, or the hereditary dignity of the peers; there is nothing which glances at a wish to introduce a republic into England; there is strong democracy, indeed, but it is confined to its proper sphere—to the restoration of the House of Commons, WHICH IS THE CONSTITUTIONAL DEMOCRACY OF ENGLAND.

The House of Commons is perpetually talked of as if it were a self-existing body, independent of the people; whereas it is their mere agent, the organ by which they speak and act, and which betrays and abdicates its trust the moment that it assumes a language of its own, which the people do not auspicate and approve. Take away *such* a House of Commons from the British Government, remove the control which the people have in it upon the executive authority by the free choice of their representatives, and then tell me how it differs from the most despotic establishments, which are the just detestation of the world. Yet how can it be asserted that the people of England have that control, if they have not the free choice which bestows it? The Society of the Friends of the People, part of whose proceedings the Crown has thought fit to make evidence, and to speak of with respect, have placed upon the

journals of the House of Commons, and demonstrated by positive evidence, this fallen, humiliated condition of the country. They offered to prove, that peers and the Treasury actually nominate ninety members, and procure, by influence, the return of seventy-seven more, making together one hundred and sixty-seven; that ninety-one individual commoners in the country procure the election of one hundred and thirty-nine, and that one hundred and sixty-two individuals absolutely return three hundred and six members—a majority of the entire House of Commons.

Gentlemen, this is no vague assertion of mine. I am reading the precise state of it, as it was offered by a regular motion in Parliament, which I had myself the honour to second. We offered to establish, that one hundred and sixty-two persons did actually return three hundred and six out of five hundred and fifty-eight, which is a majority of the House. So that everything that is to bind and ascertain your rights or mine; every measure that is to promote the glory, or to bring on the destruction of the country; every act or system of government, which is either to give us the continued prosperity of peace, or to afflict us with wasting and calamitous wars; every event that may render this mighty nation flourishing and happy to the latest posterity, or bend it down to the ignominious yoke of foreign or domestic enemies; all these heartstrings of a people, instead of depending upon a House of Commons, proceeding from themselves, are to be pulled and torn asunder as the caprice or interest of one hundred and sixty-two individuals, who choose representatives for the whole kingdom, may suffer or direct. Yet we are told that it is the pride and glory of the English Government that by law we are equal, living under the same sanction, and enjoying similar privileges.

Gentlemen, all this was made manifest to the House of Commons by the honourable gentleman who made the motion I allude to, and who held a language which the meanest man in England can understand. His language was this—"I assert this to be the condition of England; if you say it is *not*, do justice to yourselves by calling upon us for the proof, and expose your calumniators to reproach; but if it *be* the condition of England, shall it not be redressed?" Gentlemen, the proof was not received, and the grievance continues. This is the clue to the whole evidence.

I do not mean, therefore, to say (and let it be understood that I have not said), that my clients would not be equally guilty, and equally subject to capital punishment, if under the irritation of this or any other grievance, they had said, "Let us supersede this surreptitious Parliament, and hold a convention to assume its functions." When I asserted that the people in this, and in every country, had a right to change their Government, I never meant—what must have been supposed by the Court, from the indulgent interruption I received—I never meant that each indi-

vidual, choosing for himself, might rise in arms to overturn by force an established constitution. Far from it, gentlemen; I meant to say—what the people of England will be the last to misunderstand, as they were the first to practise—that all governments stand upon the public will, and ought to endure only for the public benefit; and that when this sacred maxim is forgotten, or trampled upon, a nation without the conspiracy of individuals which criminal law can act upon will, sooner or later, *do itself justice*. I meant further to say, that when I observe men referring to these great and original principles of society; when I see them recurring, in argument, to the deeds of freedom which their ancestors have achieved; when I see Englishmen particularly referring to the glorious era of the Revolution, when their fathers drove from the inheritance of the Crown, a race of kings which had reigned over them almost time beyond memory, and sent for a private man (*to them at least*) to govern in their stead; when I contemplate this disposition, I am so far from considering it to be an attack on the King's authority, that, in my mind, it is a fresh confirmation of, and exultation in his title. His Majesty is the King of the people, upon the principle alone that the people can change their kings; and it is the most glorious title which any prince can enjoy. THESE ARE MY SENTIMENTS: I love the King, but I can have no other respect or affection for him than that which grows from the common relation of prince and subject; but speaking of *him* who by the course of nature is to succeed him, and feeling much more than a common interest in *his* prosperity and glory, I hold the same language, and have ever, publicly and privately, held it. If he is not to inherit and to fill the throne upon that best and most honourable title, his inheritance is not worth having, and is not long to be had. They who act upon any other principle betray the King, and endanger his establishment. Say to the people of England, "This is your constitution; it is not fastened upon you as a weight to crush you, but has descended to you from your wise forefathers for your protection and happiness; it is *their* institution, the work of their wisdom and their heroic valour, as they made it for themselves and their posterity, so *you* may change it for you and for yours. BUT WILL YOU WANTONLY DESTROY YOUR INHERITANCE?" Say this to them, and, to use the expression of a celebrated speaker, in the case of America, "They will cling and grapple to their constitution, and no force under heaven will tear them from their allegiance to it." Let those then who govern the country, beware how they propagate the fashionable doctrines of corrupt power. Let them recollect that the English people are generous and enlightened, and know the value of their own institutions. Treat them with liberality, confidence, and justice, and nothing is to be feared. But if, on the other hand, a system of constraint and terror is to be pursued, and one part of the nation frightened or

corrupted to defame the other, I tremble to think of—I dare not give utterance in this place to—the consequences.

This was foreseen by the Duke of Richmond, and was the avowed and wise reason for his earnestness in the cause of reform; and he so expresses it in his publication, which the whole proof has demonstrated to have been the cause and the model of all the proceedings before you. Why then are *their* motives assumed or argued, against the whole evidence, to be different? I will read the passage:—

“The lesser reform has been attempted with every possible advantage in its favour; not only from the zealous support of the advocates for a more effectual one, but from the assistance of men of great weight, both in and out of power. But with all these temperaments and helps it has failed. Not one proselyte has been gained from corruption; nor has the least ray of hope been held out from any quarter, that the House of Commons was inclined to adopt any other mode of reform. The weight of corruption has crushed this more gentle, as it would have defeated any more efficacious plan, in the same circumstances. From that quarter, therefore, I have nothing to hope.” *From what quarter was there nothing to hope?* From the House of Commons, which had been tried, in which not one proselyte had been gained from corruption. What then was his resource? I shall give it to you in his own words: “It is from the people at large that I expect any good; and I am convinced that the only way to make them feel that they are really concerned in the business, is to contend for their *full, clear, and indisputable rights of universal representation.*” Rights that are repugnant and contradictory cannot exist. If there be a right in the people to universal suffrage, it is the Government which conspires against the people, and not the people against Government. But my client offers no such argument—he *differs totally from the Duke of Richmond*; and therefore, when his Grace comes here to give evidence, he ought not, upon the only principle which can justify these proceedings, to be permitted to retire; since he has written and done ten times more than can be imputed to the unhappy, miserable men who are now languishing in prison for following much less than his example. His Grace, in the same paper, expresses himself further, in these remarkable words: “When the people are fairly and equally represented in Parliament, when they have annual opportunities of changing their deputies, and, through them, of controlling every abuse of Government in a safe, easy, and legal way, there can be no longer any reason for recurring to those ever dangerous, *though sometimes necessary, expedients of an armed force, which nothing but a bad Government can justify.*” Such a magnanimous end to your proceedings, when, after having restored liberty, commerce, and free government to your country, you shall voluntarily retire to the

noble character of private citizens, peaceably enjoying the blessings you have procured, will crown your labours with everlasting glory, and is worthy the genuine patriotic spirit which animates the Irish volunteers." Let it not be forgotten that this letter was addressed to Colonel Sharman, commanding a large armed force in Ireland, without commission from the Crown.

Gentlemen, it is amazing the different effect which *the same writings* have, according as *the author* happens to be cited when the work is read. If this letter, which, coming from the pen of the Duke of Richmond, is only a spirited remonstrance against corrupt ministers, had been read in evidence by Mr. Shelton at the table, as the letter of citizen Margarot, Skirving, or Yorke, the whole mass would instantly have been transmuted into high treason against the King.

But it seems that their objects were different—for that it is plain they had abandoned the constitutional mode of petition, which was alone recommended in this letter. I maintain that this imputation is directly in the teeth of the whole body of the evidence. All the witnesses, both now and upon the former trial, and the witnesses too for the Crown, prove the very reverse: they all say that they looked to success through the slow operation of reason; that they knew the House of Commons would disregard, as it had often disregarded, the scattered petitions of *small numbers*; but that if they could collect the *universal sense of the people* upon the subject, the success of their object would be ensured, and ensured through the regular organs of Government. How else were the questions on the slave trade carried? Parliament had treated the measure, in its origin, with contempt; and I must say, that the arguments against its sudden or speedy abolition were so weighty, in my mind, that I could not give my assent to it; because I knew, from an acquaintance with the islands, that part of the evidence was erroneous and exaggerated, and because I thought the white population totally inadequate and insufficient to maintain the settlements established under the faith of the nation; but when at last the great voice of the people of England came to be collected together—when Parliament was surrounded, not with arms, but by petitions—I recollected that I was a representative of the people, and that my opinion ought to be controlled by the judgment of the nation. Many others, I believe, conducted themselves upon the same principle. The constituents of any given member have no right to control his judgment, *but the voice of the people of England, upon any subject, ought to be a rule to the House of Commons.* These very petitions, upon the subject of the slave trade, were collected too in the very manner which now gives such mighty offence: they were managed by delegation and committees of conference and co-operation in every part of the kingdom.

Let us next examine what part of the offence, upon the princi-

ples it is contended to exist, applies peculiarly to the unfortunate prisoners who have been selected for criminal justice; and if their guilt can be established, let us see how many are to be involved in it; for Mr. Attorney-General is a person of too much wisdom and experience to impute to the seven people in Newgate the design to call a Parliament without a wide-spread combination. How then is the line to be drawn? And to what circumference is the empire of destruction to extend? If the evidence of the conspiracy is to be collected from the whole mass and tenor of the conduct of these societies, and is to attach upon the prisoners, not from any specific acts of their own, but principally because they belong to some one of them as members, it is plain that all who have at any time belonged, or yet belong to them, are equally implicated in guilt, and equally subject to death under the law. How many tenants at the will of the ministers are upon this principle to hold their lives in Great Britain? All the hundred and eighty delegates who met at Edinburgh, and all the thousands who sent them, are of that description; and thousands more in every populous town in this part of the kingdom.

Let every man, therefore, be responsible for his own acts, and not for the writings and opinions of others, and more especially of others whom he never saw or heard of. When men co-operate for some PUBLIC object, which in common they agree in, it can never happen that they shall agree in *everything* belonging to it; nor is a man's opinions ever to be taken, even by the result of the resolutions of those with whom he associates for an avowed object. I shall exhibit to you a proof of this in one of the most enlightened men that England ever bred, and to whom she owes unparalleled obligations. I mean to call Mr. Fox, who will tell you that he was a delegate for Westminster, in the year 1780, when a convention was held to consider of the best means for obtaining a reform in Parliament. His opinions were always adverse to universal suffrage; yet, nevertheless, his name appears to the petition which asked it of the House of Commons, being signed to it as chairman of the body, governed by its majority, and bound to give effect to its proceedings. In the same manner vicious men may mix themselves among the honest, with the ulterior design of establishing evil upon the basis of what is good: it ever must be so in all the transactions of the world; and parts of the evidence may lead to a suspicion, that it might be so in the present instance; but for that very reason a jury ought to be the more abundantly cautious of the effect of foreign and irrelevant matter; and should examine into each man's guilt or innocence, by his own individual conduct.

Gentlemen, I have hitherto insisted upon the views of the Constitutional Society as they are to be collected from its origin and its acts; and I am equally prepared to show (indeed it most decisively appears already, by everything which has been proved by

the Crown), that the objects of the Corresponding Society were precisely similar; that they were avowed by their original institution, which they published to the world; and which, though published upwards of three years ago, and though ever since in most extensive circulation, were not by the Crown even considered as in any respect injurious or illegal. Yet now, after having for all that time been transcribed into every newspaper, and sold publicly by every bookseller in the kingdom, without even a common information being put upon the file against any printer for a libel, they have been suddenly got together, not against their authors, but against a stranger to their very existence, and have furnished the elaborate commentary upon the statute of high treason, which you have been obliged to listen to for so many days together.

Let us now examine the original institution of the Corresponding Society, and see whether, in sobriety and fairness, it furnishes the remarks which have been made upon it.

It is charged with the introduction of dangerous novelties—yet on the very front of it where they set out with describing their objects, they say—“Laying aside all pretensions to *originality*, we claim no other merit than that of *reconsidering* what has already been urged in our common cause, by the Duke of Richmond, Mr. Pitt, and their then honest party, years back, and persevere in supporting with candour and zeal the banners of truth already displayed by them.” Now I ask any person, who will only consent to exercise the common candour of a gentleman (to say nothing of the scrupulous reserve of criminal justice), whether it was possible for a society, whose object was to persevere in the cause which Mr. Pitt and the Duke of Richmond had originated and deserted—better or more distinctly to express it. The language is most precise and unambiguous—but it seems that it is all *colour and deceit*; it may be so—but they who assert that a man’s meaning is the very reverse of his expressions, must prove that variance as a matter of FACT, by comparing his conduct with his declarations. Has any such proof been given in the instance before us? So far from it, that we are now upon the second trial, after the acquittal of Mr. Hardy, who stood before a jury to answer for THIS VERY PAPER, of which he was the AUTHOR, and to which his NAME was signed. The whole object of that trial was to show this variance between the conduct of the society, and this its original and public profession; with what success the late verdict has recorded. Not a witness appeared for the Crown who did not prove the very reverse of the imputation; and though possessed as it was of the most private papers of all whom rashness thought fit to suspect, not a scrap of writing was produced to establish any departure from the open, avowed objects of their institution: yet, notwithstanding the acquittal of the avowed author and publisher of this paper, to the expressed satisfaction of the Court and country, it is now read over

again as evidence, and vehemently insisted upon with the very same arguments which had been before rejected—with this difference only, that instead of being urged as formerly against him who was accountable for its contents, they are now employed against a gentleman who does not appear from any proof to have been even acquainted with its existence, and who began, and had been pursuing HIS object (whatever it was) for years before the paper had a being which is used to decipher his intentions. How completely is the Lord Chief-Justice's argument subverted and torn to pieces by this procedure! So far from sanctioning the principle, that men are not entitled to the benefits to be derived from a fair construction of their expressions, his lordship told the jury, that, in a case so highly penal, they were not even strictly to be bound by their literal interpretation: yet you are now gravely asked to condemn to death the gentleman at the bar, by taking the meaning to be directly the reverse of what language has established, although all the extrinsic evidence by which alone such a latitude of judgment could be endured, falls in with and supports the ordinary construction of the writing.

The logic by which this mode of judgment is established keeps pace in novelty with the proposition itself. "People may talk of their loyalty," says the Solicitor-General, "and of their love for the constitution, when nothing like it is in their hearts. Lord Lovat did so when he was plotting the destruction of his country." Surely this observation is hardly worthy of so learned a man. Lord Lovat took up arms against the King, he was actually taken in open and banded rebellion; and therefore, to be sure, anything he might have said or written upon the subject of his principles or intentions could be of no avail; whatever he might have said or written, his open deed condemned him. If a man holds a knife to my throat to destroy me, it is in vain for him to say he loves me. But to give the case of Lord Lovat any bearing upon the present, you must first prove that our design was to arm; and I shall then admit the argument and the conclusion. But has any such proof been given upon the present trial? It has not been attempted—the abortive evidence of arms has been abandoned—even the solitary pike, that formerly glared rebellion from the corner of the Court, no longer makes its appearance, and the knives have retired to their ancient office of carving. Happy was it, indeed, for me, that they were ever produced, for so perfectly common were they throughout all England, and so notoriously in use for the most ordinary purposes, that public justice and benevolence, shocked at the perversion of truth in the evidence concerning them, kept pouring them in upon me from all quarters. The box before me is half full of them; and if all other trades should fail me, I might set up a cutler's shop in consequence of this cause.

The next passage of the original institution, which the Solicitor-

General selected for observation, is precisely of the same sort. It is impossible to support his argument on it without confounding the whole structure of language. If (say they) we can once *regain* an annual Parliament, to be fairly chosen by the people, they will then be RESTORED to their just share in the government of their country. The expression is, REGAIN annual Parliaments—yet the charge is, that the constitution was to be wholly subverted, and a new and different one established. How is it possible to REGAIN that which was never before established? How were they to *regain* that which they were themselves to *invent* and to *create*? How was that to be *restored* which *never before* had an existence?

The next accusation against the Corresponding Society is so manifestly and so glaringly unjust that I feel I have a right to complain of its introduction—though not of its introduction by my learned friends, who were bound to lay before the jury all the materials which the two Houses of Parliament, representing the nation, had adopted upon the subject. The Attorney-General was undoubtedly bound in justice to the prisoner as well as in deference to Parliament, not to garble the proceedings, but to submit *the whole of them* to your consideration. I have no complaint against *him or against any of the honourable men who assist him*. So far from it, I have nothing more at heart at this moment than that the impression of my observations should reach beyond the Court, and affect THE ATTORNEY-GENERAL HIMSELF, whose candour and integrity I know will be open to receive them. It was impossible he could know what he has learned from the evidence in the last cause, or what he is yet to learn from it in this. And as I foresee that the most beneficial consequences may arise to others hereafter from the subject being seen by my learned friend in its true and genuine colours, I shall, whatever may be the labour to myself, proceed in the detection of the fallacies which have been heaped on one another, though many of them have little or no application to the defence I am now engaged in. My client, indeed, generously imposes this burden: as he looked only to the general happiness in the conduct which brings him a prisoner before you, without any possible view of advantage to himself, so he now looks anxiously round him with the same generous and independent spirit, and enfeebles, by expansion, the argument of his own innocence, that it may extend to protect the innocence of others, and to vindicate the freedom of his country.

Gentlemen, the accusation which the House of Commons made part of its report, and the injustice of which I complain, is, that the Corresponding Society had no sooner been established, than a Society at Norwich wrote to them to know the object of their institution; and that so conscious were they that their designs were different from their public professions, that, instead of at once appealing to their printed institution to speak for itself upon

the occasion, they wrote a dark, guarded, enigmatical letter, in order to conceal a purpose which could not with prudence or safety be revealed. I confess I never in my life was so much surprised as at the impudence and falsehood of this assertion, for I maintain that it is not possible for language to furnish an answer more explicit, nor one that in more direct terms *did* appeal to their public declarations for their designs. I will read to you the very words of the correspondence. The Norwich Society say, "Our principal design in writing, is, that we may have an opportunity of knowing more exactly what may be thought the most eligible steps to be taken in carrying on this great business of our associated brethren, and to have an opportunity to ask such sort of questions as may be thought very reasonable among the brethren, especially when we think that publications are covered with a sort of obscurity in it, as the Sheffield people's declaration, which seemed determined to support the Duke of Richmond's plan only; but since we find, in a printed letter received from them in a book, that they mean to abide by some moderate reform, as may hereafter be brought forward by the Friends of the People, which method is uncertain to us. Again, we find that the Friends of the People and the Society for Constitutional Information do not exactly agree—we could be glad to know the reason. It seems to me as though the difference was this—The Friends of the People mean only a partial reform, because they leave out the words expressing the Duke of Richmond's plan and talk only of a reform, while the Manchester people seem to *intimate, by addressing Mr. Paine, as though they were intent upon republican principles only.* Now, to come closer to the main question, it is only desired to know whether the generality of the societies mean to rest satisfied with the Duke of Richmond's plan only, OR WHETHER IT IS THEIR PRIVATE DESIGN TO RIP UP MONARCHY BY THE ROOTS, AND PLACE DEMOCRACY IN ITS STEAD."

This is the letter, the language of which has been so mightily relied upon, and which is printed in italics and capitals in the reports of both Houses of Parliament. But what, in the first place, have the Corresponding Society to do with the language of this letter; and how, in common decency or common sense, can it affect THEM? Is it to be endured that treason shall be fastened upon ME, because I am absurdly or impertinently asked whether my intentions be traitorous, unless my previous conduct or declarations have excited a reasonable suspicion, or unless the evidence of bad intention can be collected from MY ANSWER? If my *answer*, indeed, furnishes conclusions against me, that is quite another thing. Let us, therefore, examine *that*; for the QUESTION is no evidence at all but as it is introductory of the reply. Yet—would you believe it? the *answer* is not even printed that I can find in the reports. It is wholly suppressed, and is only introduced by the candour of the Crown in the conduct of the prosecution. The answer, which

bears date the 26th of November 1792, begins as was natural, with recapitulating the questions put to them, nearly in the language of the letter itself, and then they say: "And as to the object we have in view, we refer you to our addresses. You will therein see we mean to disseminate political knowledge, and thereby engage the judicious part of the nation to demand a *restoration* of their rights in ANNUAL PARLIAMENTS; the members of those Parliaments *OWING their election to the unbought, and even unbiassed suffrage of every citizen in possession of his reason, and not incapacitated by crimes.*" This is the answer of the Corresponding Society. And having set myself to rights with my learned friends at the bar, but meaning to extend my courtesy no further, because justice confines it to *them*, surely I have a right to ask whether it be consistent with the dignity or character of a great and august tribunal to accuse persons capitally arrested, and before the season of their trial, of having shrunk from questions put to them for an exposition of their motives, *although they were possessed of the answer I have just read to you, which refers the questions positively and unambiguously to their original address;* which repeats the same legal objects, if possible, with additional precision, and which tells them, that from these objects *so a second time delineated and expressed, they mean neither to deviate to the right or left, but to pursue them by all means consistent with the law and constitution of the kingdom.*

The next observation, which is made upon the language of their proceedings, is still of the same complexion, and turns round directly in their support.

The charge, you observe, is for conspiring to hold a convention in England in the year 1794, to usurp the Government, and to depose and destroy the King—all the papers and letters which have been read, with earlier dates, having been only produced to convince you that the convention was projected for that detestable purpose. To establish this from their own compositions, Mr. Solicitor-General says (he will give me leave to remind him of his expression), "Look to the language in which they themselves speak of the proceedings in agitation—Let us agree to hold **ANOTHER** British convention. What could this mean?" says my learned friend, *laying a strong emphasis upon the word ANOTHER.* "What could it possibly mean, but a resolution to hold *another* convention *similar to that which had been held in North Britain*, consisting of delegates from the different societies, and which had been before dispersed by the authority of the law?" I TAKE HIM AT HIS WORD—IT COULD HAVE NO OTHER MEANING. They most unquestionably intended a convention similar in all respects to the one at Edinburgh, which had been suddenly dissolved; and consequently, upon his own principles, to make out a case of treason against the prisoners who projected this ENGLISH convention, he

must show that the assembling the convention at *Edinburgh* was an act of high treason in all who were engaged in it. To establish upon his own principle of their designs being similar, that the English convention was projected with the view of assuming and exercising all the functions of Parliament, he is inevitably bound to show that the convention at Edinburgh, of which it was a type, did actually assume and exercise them. Has he established either of these proofs? Has he shown by evidence that the hundred and eighty persons who, as delegates from the different societies in Scotland, assembled at Edinburgh under the name of a convention, *did in fact* assemble to supersede the Parliament of the kingdom, and were guilty of the crime of high treason? Has he shown (which to maintain his argument he is bound to do) that all those who sent them for that purpose were implicated in the same guilt? If he has, he has struck at the lives of thousands and ten thousands of His Majesty's most affectionate subjects in North Britain, who were members of those societies. Has he proved distinctly that this Edinburgh convention *did actually assume to itself all or any of the functions of Government*, which he says would have been assumed here by the meeting in agitation had it not been nipped in the bud by the arrest of the prisoners, the seizure of their papers, and the institution of this solemn proceeding?

The Solicitor-General having himself made this the question, as indeed he could not avoid it, let us examine what has been proved upon the subject. And in entering upon this duty, it really fills me with horror to think that the lives of men—what do I say?—OF MEN!—that the lives of ENGLISHMEN should depend upon the successful resolution of such a chaos of matter as is spread before me, in which every faculty of the mind is bewildered and confounded; that they should not only have *their own* writings to explain, and *their own* transactions to answer for, but that there should be heaped upon their heads everything that has been said, written, or transacted for years together, in every corner of the kingdom, by persons with whom they not only never acted, but whose names or existences they never heard of. If the criminal law of England countenances such a proceeding, how is the subject to contend with any prosecution which the Crown chooses to institute? Where is the man capable of assisting him upon such a trial? What purse is equal to the expense of witnesses? and where is the tribunal equal, in body and in mind, to its decision?

In the first place, however, and before I proceed to explore the proceedings of the Edinburgh convention, in the best way I can, through the maze of materials before us, let me ask, as a preliminary question, *what the honourable gentleman, whom I represent, had to do with them?*—*Supposing all its transactions had been*

treason, how is he affected by them? It has been assumed that Mr. Tooke was an active promoter of the Scotch convention, because his name stands entered in the books of the Constitutional Society as present when the sending of a delegate to Edinburgh was under deliberation. Good God! gentlemen, how gross is this conclusion; and how pernicious is the principle which concludes it! This entry would not be evidence in an action for ten pounds; yet what would not do upon such an occasion, or upon a charge for killing a hare or a partridge, is to be used as evidence to destroy the life of an English subject, and with it the law and constitution of the kingdom. The society has been considered as a corporation; its books have been laid upon the table as authoritative acts, binding upon all its members; and the pen of the secretary of a club is to conclude upon a fact which is to affect life. The real truth is (*and it ought to be a solemn warning to courts of justice not to depart from the strict rules of evidence*), Mr. Tooke was NOT PRESENT when the proposition for sending a delegate to Edinburgh was made; neither did the proposition, when made on that day, receive the concurrence or approbation of the society, but, on the contrary, was objected to by the majority; not because they thought it criminal, but because they believed it to be useless. The further discussion of the subject was, therefore, postponed from the 25th to the 28th of October; when a special extraordinary meeting was appointed, and Mr. John Williams, the mover of the proposition, was sent to Wimbledon to request Mr. Tooke to attend and support it; but it appears by Mr. Adams's evidence that he absolutely refused to come, and treated the proposal as frivolous and impertinent, insomuch that he was considered as a man bribed and pensioned to betray the cause of parliamentary reform, by withholding his support to a legal and well-meant proposition in favour of the proceedings in Scotland. Yet this gentleman, greatly advanced in years, and declining in his health, who was shut up *at this time, and long before*, within the compass of his house and garden at Wimbledon, where he used to wish an Act of Parliament might confine him for life—who was painfully bestowing a greater portion of his time to the advancement of learning, than the rudest health could with safety bring to it—who was intensely devoted to researches which will hereafter astonish, and will not be soon forgotten by the world—who was, *at that very moment*, engaged in a work such as the labour of man never before undertook, nor perhaps his ingenuity ever accomplished—who had laid out near an hundred pounds only in packs of cards to elude by artifice and contrivance the frailty of memory and the shortness of life, otherwise insufficient for the magnitude of his pursuit—who never saw the Constitutional Society but in the courtesy of a few short moments, after dining with some of its most respectable members, and who *positively objected* to the very measure which is the whole foundation of the prosecution—is, never-

theless, gravely considered to be the master-string, which was continually pulling and directing all the inferior movements of a conspiracy as extensive as the island, the planner of a revolution in the Government, and the active head of an armed rebellion against its authority. Gentlemen, is this a proposition to be submitted to the judgment of honest and enlightened men upon a trial of life and death? Why, there is nothing in the Arabian Nights' Entertainments, or in the Tales of the Fairies, which is not dull matter of fact compared with it. But the truth is, as it stands already upon Mr. Adams's evidence, that so little was the energy of the society upon the subject, that, at the general, adjourned, and *extraordinary* meeting, which was to decide upon this great question—which Mr. Tooke thought so small a one, but upon which the fate of Great Britain is considered here as having depended—only seven people gave their attendance; and although Mr. Yorke was chosen delegate to give countenance to the cause, and to former resolutions, yet there were obstacles to the completion of his mission, because the *ways and means* could not be provided for his support.

It appears also, by Mr. Adams's evidence, that the Constitutional Society, which, for the purposes of this proceeding has been represented as a sanguinary and widely-extended conspiracy, consisted only of a few gentlemen, who wished well to the cause of constitutional reform, which they were too honest to abandon, but too insignificant in wealth, or numbers, efficaciously to support. In order, therefore, to prevent themselves from being laughed out of a very honourable purpose, and to prevent the honest and independent part of the public from giving up the cause of reform, from the despair of countenance and support, they published in their resolutions thousands of papers, which they never printed, and expended large sums which they never had. I might, therefore, wholly decline all consideration of the Scotch convention as impertinent and irrelevant, and if I were my own master I would do so; but the honourable gentleman who has a right to direct my conduct, with a generosity which must endear him to everybody, even in this very moment, when he sees me preparing to measure my discourse by the exigency of his own particular defence, insists upon my meeting the Solicitor-General upon the major proposition of his argument: "I could maintain," says my client, interrupting his own counsel in his own defence, "I could maintain that I am not criminal (you have already, indeed, amply maintained it); but *that is not enough*; when the lives of others, and the privileges of my country, are embarked in the controversy. I call upon you, therefore, Mr. Erskine, to maintain, *that there is no criminality*—I desire that the acts of others, through whose sides I am vainly sought to be wounded, in order that the reverberating stroke may pierce *them* the deeper, may be vindicated and explained." In obedience to the taskmaster, then, let us see what this convention did.

One of their first declarations, and which is preposterously relied on to prove their usurpation of the powers of Government, is in these words:—

“Resolved, That this convention, considering the calamitous consequences of any act of the Legislature”—ACT OF THE LEGISLATURE!—Why, according to these gentlemen, they were THEMSELVES THE LEGISLATURE, for the Legislature was gone, if their argument be founded, the moment the convention sat. “Resolved, That this convention, considering the calamitous consequences of any act of the Legislature, which may tend to deprive the whole, or any part of the people, of their undoubted right to meet by themselves, or their delegates, to discuss any matter relative to their rights, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive OF THE KNOWN AND ACKNOWLEDGED CONSTITUTIONAL LIBERTIES OF ENGLISHMEN.” Gentlemen, I must pause here, though in the very middle of a sentence, because every limb and member of it furnishes a decisive refutation of the charge. Here are men accused of having assumed the supreme authority, and as the subverters of English law, who are yet peaceably claiming *under the banners of the law*, the indisputable privileges of subjects to discuss the rights which *that law* bestows. They then say, and here it seems lies the treason—“We do therefore declare, before God and our country, that we shall pay no regard to any act which shall militate against THE CONSTITUTION OF OUR COUNTRY.” But, according to the other side of the table, the constitution of the country was at an end, and all its powers assumed by this convention, although, in the very proceeding which they thus most unaccountably select for commentary, they bow obedience to all acts *consistent with the constitution*, and only refuse it to such as, in their minds, militated against the first principles of the English Government, which they were determined to support instead of being banded to overturn. But, in what manner, and to what extent, did they project a resistance to acts militating against their rights? Did they meditate, by force, the destruction of Parliament which infringed them? Listen to the conclusion of this declaration, upon which so much has been said, and then tell me whether this body can, with common decency or justice, be charged as in a state of rebellion. “*We will continue to assemble to consider the best means by which we can accomplish a real representation of the people, and annual Parliaments, until compelled to desist by superior force.*” What is this but saying that they will, for an honest end, abide the penalties of an unjust law, rather than escape from them by its observance? Mr. Justice Blackstone truly says, that there is nothing even immoral in such disobedience—for that, if there were, prohibitory and penal regulations would be snares to the conscience of the subject. The fact is, there never had been

a law in England, nor was there any then in existence, to prohibit the measures they were engaged in. An act which had just been passed in Ireland had, for the first time, declared such proceedings to be a misdemeanour, though without an act we are now treating them as high treason; and the introduction of a similar bill into the English Parliament being the common report, they resolved not to sanction its unconstitutional principle, much less before the law existed, by a *voluntary* obedience, but to wait its regular enforcement by the magistrates. This is not only the obvious meaning of the resolution itself, but it is established beyond a doubt, by their subsequent conduct, as it appears by the letter of Margarot, the delegate of the Corresponding Society, who, giving an account of their dispersion by the magistrates, as I shall presently read it to you, expresses himself to this effect: "If," says he, "we had desisted without the exertion of superior force, it would have been surrendering our rights, and the privileges of others; but, when called upon by superior force—i.e., by the authority of the magistrate—the submission could not be considered as an acknowledgment of transgression on our parts." The dissolution of this *Parliament* (as it is gravely styled) is described, by Margarot's letter, to have been effected thus:—"Two messengers came again into our room with Gerald; they left a summons to appear at ten o'clock: with Margarot they left nothing but a request to accompany Gerald to the office; yet, when arrived there, he found that a warrant was issued against him for the purpose of detaining him a prisoner. On Thursday the whole convention were equally ill-used; the provost went, and after pulling Matthew Campbell Brown, of Sheffield, out of the chair, ordered the convention to disperse, and told them, he would allow no such meetings in future. The next day, the convention having agreed to meet at another place out of the jurisdiction of the provost, we had not long been assembled, before the sheriff appeared amongst us, and having asked whether the meeting was the British convention, and being answered in the affirmative, ordered us to depart. He asked who was president—upon which Margarot, having openly asked and obtained leave from the convention, placed himself in the chair, and told the sheriff he would not break up the meeting, *unless unconstitutionally forced thereto, by the sheriff's pulling him out of the chair*; which the latter, after some hesitation, complied with. The ex-president, Gerald, was then put into the chair in order to be pulled out by the sheriff also, which being done, the meeting was then closed with prayer, and the company departed peaceably." Now, does the whole history of human folly furnish anything so extravagantly absurd and ridiculous, as to consider this as the suppression of an extensive and armed rebellion, and as a sort of counter-revolution in Great Britain?

. Upon the trial of a solemn and important cause, upon which not

only the lives of innocent men are depending, but the existence of the laws themselves under which we live, I am afraid to run into observations which are ludicrous; but such is the preposterous nature of this whole business, that it is impossible to avoid it. In reading the minutes of this convention, as the regular proceedings of a Parliament, holding at once the sword and purse of the kingdom, we have frequently encountered with matter which, whether we would or no, has convulsed us with laughter in the midst of the awful duty we are engaged in. In the minutes of the fifth day, the 21st of November 1793, we find the deputy-secretary informing the convention that he had last night received fifteen shillings from six visitors, which was ordered to be paid to Mr. Skirving, with three shillings more already collected; and, on the day following, we have Mr. Margarot moving (I suppose in the Committee of Ways and Means), that a general collection should be made, which being consented to, and Mr. Callendar and Mr. Scott being appointed collectors, these gentlemen made their report instantan :

| | £ | s. | d. |
|--|---|----|----|
| That there had been drawn | 4 | 5 | 8 |
| But of which there being <i>two bad shillings</i> , the balance was | 4 | 3 | 8 |

To which a person of the name of Moore added a shilling. Yet this assembly of poor unarmed people, collecting sixpences to pay for their room and their advertisements, who were dispersed by a common Justice of the Peace, with less bustle than a watchman puts an end to a brawling in the corner of a street every night throughout the year, are now considered as having intended to assume to themselves, and indeed, for a season, to have exercised all the functions of this great country—protected as it is by a vast standing army, by a national militia, consisting of all the gentlemen of England whose landed interests depend upon the stability of the Government, and by the great body of opulent merchants and moneyed men, whose fortunes are vested in the public funds, and thereby their possessions and the hopes of their families entwined with the very bowels of the State.

There is another point of view, from whence, if we examine this proceeding, it must appear, if possible, still more extraordinary. I admit that, in consequence of the dispersion which they considered to be illegal, a great many inflammatory papers were written; and that it was thought advisable, upon the whole, to subject the principal persons engaged in this convention to a legal prosecution. But how were they prosecuted? and by that very Government which has instituted the present proceedings. Were they prosecuted for high treason? No. Was the charge of treason ever thought of, or connected with their names? I ANSWER, NEVER. Although they were not met together, like Mr. Hardy and

the other unfortunate prisoners, to consider how they *should in future* hold a convention, but were taken, *flagrante delicto*, in the very act of holding one, and of holding precisely such a one as the prisoners are charged with having only projected, **THEY WERE ONLY ACCUSED OF A MISDEMEANOUR.** I repeat the expression, they were only prosecuted for a misdemeanour, *although taken in the act of holding precisely such a convention as the prisoners only projected.* For I again refer to the Solicitor-General, whether he did not *twice* assert, and his learned coadjutor *more than twice*, that the conspiracy charged upon the record was to hold a convention *similar to that which had been held and put down in Scotland.*

I assert also that Government had the same materials in its hands for conviction which it has at this hour—they had spies in every corner.

——“There was not a man
But in his house they had a servant fee'd.”

And the minutes of the convention, which have been read at your table as evidence of high treason, were seized by the provost and sheriff of Edinburgh, in 1793, and read as evidence against Margaret and Gerald, when prosecuted *only for libels* in the Justiciary Court.

What shall we say then of a Government which lays a snare for innocent blood, by giving to an act the character of a misdemeanour, waiting for future victims when it should be exalted to the denomination of rebellion and treason. Gentlemen, I make no such charge upon Government—I acquit them of all schemes upon the subject, good or evil—I believe that the fit of alarm came very suddenly, and very lately upon them; and that they do not know, even now, upon what principle they are here, or what they have to hope from their proceedings.

The magistrates of Edinburgh having brought the leaders of the convention before the Court of Justiciary, they were convicted of misdemeanours; but these judgments, instead of producing the effect that was expected from them, produced (as ever happens from perverted authority) great irritation and discontent. They were, in my mind, and in what is far more important, in some of the greatest minds in this country, **ILLEGAL PROCEEDINGS.** And although I do not mean, in this place, to make any attack upon magistrates in the execution of their duty——

LORD CHIEF-JUSTICE EYRE. It should not be stated here that they were illegal.

Mr. ERSKINE. I did not say they were illegal. I said, *that in my opinion they were so, and that they were questioned in Parliament as such.* It is not my purpose to give offence to his lordship, who has given us an indulgent and attentive hearing through the whole course of this cause; but it is material to state, because

it accounts for some of the writings in evidence, that the opinion and conduct of the Scotch judges *were questionable*; that they were actually questioned in Parliament (AS THEY MAY YET HERE-AFTER BE QUESTIONED); and were pronounced, by the greatest men in both Houses of Parliament, to have been harsh, unconstitutional, and illegal. Smarting, therefore, under the lash of these sentences, which they considered to be unjust, and believing that their colleagues had done nothing more than the law authorised and their consciences suggested, they came to an intemperate resolution concerning the Scotch judges, which, though so strongly relied on, can certainly have no sort of application to the cause, since if they had knocked on the head the Lord Justice-Clerk and all his brethren, while presiding in their court, instead of contenting themselves with libelling them, it would not have been high treason within the statute of Edward the Third. This mighty bugbear of a resolution is in these words. I am not afraid to meet it :—

“Resolved, That law ceases to be an object of obedience when-ever it becomes an instrument of oppression.”

This is a mere abstract proposition, to which I would subscribe my own name at any time.

“Resolved, That we call to mind, with the deepest satisfaction, the fate of the infamous Jefferies, once Lord Chief-Justice of England, who, at the era of the glorious Revolution, for the many iniquitous sentences he had passed, was torn to pieces by a brave and injured people.

“Resolved, That those who imitate his example deserve his fate.”

Gentlemen, if the application of this maxim was meant to be made to the recent proceedings of the Scotch judges, it may be a libel upon *their* persons and authority for anything I know or care. I see nothing that is either criminal or indecent. In my mind, on the contrary, the promulgation of such awful and useful reflections should not be left to the irregular, and often misapplied, promulgation of private men, but should be promulgated at solemn festivals by the authority of the State itself. There ought, in my opinion, to be public anniversaries of the detestable, as well as of the illustrious actions of mankind, in order that, by the influence of negative, as well as of positive example, the greatest possible hold may be taken of the grand ruling passion of our nature, and the surest indication of its immortality—the passion of living in the minds of others beyond the period of our frail and transitory existence. By such an institution, public men would every moment be impelled forward in the path of their duty by the prospective immortal rewards of an approving posterity; and what is still more important, and far more applicable to my present purpose, wicked men, clothed with human authority over their fellow-

creatures, would be deterred by the same means from the abuse of them; because, in the very moment when they were about to barter away the life of innocence, or the public justice of their country, for some miserable advance of ambition in the decline of a transitory life, they might, perhaps, start back from the temptation, appalled by the awful view of future ages rising up before the imagination, sitting in judgment upon their characters, and proclaiming them with indignation to the universe.

But how after all do these resolutions (whatever praise or blame may belong to them) apply to the matter in hand? For Mr. Tooke positively refused to sanction them. Though chairman of the meeting, he would not remain in the chair when they were passed; and I will call, if you think it material, the very person who took his place while they were passing. Yet, nevertheless, they are brought forward against him, and insisted upon with the same arguments as if he had been their author. Gentlemen, this is intolerable. The whole history of human injustice can produce nothing like it. *The principle seems to be, that all the libels written by any man in the world who at any time has supported a reform in Parliament, whatever may be the subject of them, and however clashing with one another in design or opinion, may be drawn into the vortex, and pointed to convict of high treason Mr. John Horne Tooke.* By reading these contradictory performances as the evidence of his designs, they make him one day a reformer of the House of Commons, the next a rank republican, the third well affected to our mixed constitution, and the fourth relapsing into a republican again. In this manner, by reading just what they please, and insisting upon their own construction of what they read, the honourable gentleman is made to oscillate like a pendulum, from side to side, in the vibrations of opinion, without pursuing any fixed or rational course; although I will show you that, of all men in the world, he has been the most uniform, firm, and inflexible in his political course.

The next paper which they read is hardly, I think, at all connected with the important subject of the trial, being a mere squib upon the present just and necessary war. It is a resolution of the Constitutional Society of the 24th of January, to which Mr. Tooke was privy, in which it was resolved—"That an excellent address of the Corresponding Society should be inserted in their books; and that the King's speech to his Parliament be inserted under it, in order that they may both be always ready for the perpetual reference of the members of this society during the continuance of the present unfortunate war, and that, *in perpetuam rei memoriam*, they may be printed in one sheet at the happy conclusion of it—which happy conclusion, according to the present prosperous appearances, we hope and believe not to be many months distant."

Gentlemen, surely it is not treason to believe that which ministers are daily holding forth ; surely it is not treason to expect and believe, upon the authority of Parliament, that the war we are engaged in will soon be brought to a prosperous issue. Would the people of this country have been so composed in a conjuncture, which for calamity has no parallel in the history of Great Britain, but for these constant declarations of the King's ministers, which Mr. Tooke is only accused of having believed? Were we not told (*I am not entering upon political controversy, but defending my client*)—But were we not told daily, that the war would be brought to a speedy and happy termination? And can it be criminal in a subject to give faith to the acts and declarations of Government? But supposing it, on the other hand, to be only irony upon Administration, and a ridicule of their proceedings, which may perhaps be the best construction, is a man's life to depend in this country upon his admiration or support of any particular set of ministers? I care not a straw what you, the jury, who are to decide upon my client's conduct, may think upon these topics, or upon the ministers of the day. I rely upon your judgments as honest men, impressed with a sense of religion, who know the sanctity of the oath you have taken, and the duty which it imposes, and I only introduce these subjects, not because I think them relevant, but because they have been thought so by the Crown who read these papers to condemn us.

But it is the *conclusion* of this resolution, I believe, which gives the offence, where upon motion the words "faithful and honourable," which stood applied to the Parliament, were expunged, and the words "his, and his only," inserted in their stead. What then? This is no denial of the fidelity of the King to his Parliament, but is an insinuation, on the contrary, that the Parliament was unfaithful to the King. If it can be considered therefore in the serious light of a libel upon *any* authority, it is a defamation of the *House of Commons*. But we are not brought here to answer for a libel upon that assembly. We are accused of a conspiracy to cut off the King, and in order to prove it, they give in evidence an idle squib against the House of Commons for not faithfully serving him ; so that if the paper were deserving of any consideration one way or the other, it makes quite against the purpose for which it is used, unless it is meant to be contended that the King and the House of Commons are one and the same thing.

Another matter equally irrelevant has been also introduced, very fortunately however for the honourable gentleman at your bar, because it affords a signal instance of his generosity and nobleness of mind. I speak of his letter promoting a subscription for Mr. Sinclair, who had been convicted in Scotland for acting as a delegate at the convention.

Although Mr. Tooke not only never sent him as delegate, but

strenuously objected to his delegation—though he so uniformly opposed the whole measure which led to his conviction and punishment, as to lead to the question of his own sincerity in the minds of some who supported it—although the consequence of the sentence could not have pulled a hair out of his head, but led, on the contrary, to confirm the prudence and propriety of his conduct; yet, in the hour of Mr. Sinclair's distress, he was the first man to step forward to support him, and to take upon himself the public odium of protecting him, though he had privately discountenanced every act which could give the sufferer any claim to his countenance or support. I am perfectly sure that my worthy friend the Attorney-General is too honourable a man to make a single observation on this genuine act of disinterested benevolence. But I am not the less obliged to Mr. Gibbs for not suffering me to omit in its place a matter which redounds so highly to the honour of the gentleman we are defending.

It is the same spirit that dictated the other part of the letter which regards Mr. Pitt. Filled with indignation that an innocent man should be devoted to a prison for treading in the very steps which had conducted that minister to his present situation, he says (I have mislaid the letter, but can nearly remember the expression), "That if ever that man should be brought to his trial for *his* desertion of the cause of parliamentary reform, for which Mr. Sinclair was to suffer, he hoped the country would not consent to send *him* to Botany Bay."

Gentlemen, I have but one remark to make upon this part of the letter. Mr. Tooke is not indicted for compassing and imagining the death of Mr. Pitt.

Gentlemen, we come at last to the very point of the charge—viz., the conspiracy to hold the convention in England, and the means employed for that purpose; and it is a most striking circumstance, a circumstance in my mind absolutely conclusive of the present trial (unless you mean to reverse the former verdict, which none of you will, and which *all of you* certainly cannot), that Mr. Hardy, who has already been acquitted, was the very *first* and *single* mover of the proposition to hold this convention; and that all the subsequent steps taken in the accomplishment of it, down to the day when the prisoners were sent to the Tower, were taken *not only with his privity but through his direct agency*; and that every letter and paper which has been read upon the subject bears the signature of his name, many of them being also of his own composition. If the convention therefore was originated for the detestable purpose charged by this indictment, Mr. Hardy, who has been acquitted, was the original and the principal traitor; whatever was known, **HE** certainly knew; whatever was done upon it, **HE** not only did, but actually led the way to the doing of by *others*. If there was a conspiracy, **HE** was manifestly the principal conspirator.

This is no assertion or argument of mine. It was avowed by the Crown, which now prosecutes Mr. Tooke, and Mr. Hardy was therefore *first*, and most properly, selected for trial; because the object of the one we are now engaged in, and of every other that can succeed to it, are only to apply by *remote* implication and *collateral* circumstances, the very acts which were *directly* brought home to Mr. Hardy, who stands acquitted by his country—nay, which were without controversy admitted by his counsel. The Court said, in summing up the evidence in the former trial, that it had been but feebly argued that Mr. Hardy was not implicated in a great part of the evidence.

Gentlemen, this was but a cautious and indulgent mode of statement by the Court, lest admissions might be supposed to have been made by us which counsel ought not to make; for certainly we neither did, nor could attempt to deny, that Mr. Hardy was cognisant of, and active in every transaction which regarded the British convention, the very treason charged upon the record. The Attorney-General therefore is reduced to this dilemma—either to contest the justice of the former verdict which acquitted Hardy, or to surrender the present prosecution. That this is the true position of the cause will appear incontestably from the proofs.

The origin of the convention appears to have been this:—Mr. Hardy, who has already been acquitted by his country, having received a letter, which has been read to you, from a country correspondent, stating that as the Edinburgh convention had been improperly and illegally dispersed, it would be proper to hold another; he laid the proposal before the Corresponding Society, who adopted it upon the 27th of March 1794, and transmitted a copy of their resolution upon the subject to the Constitutional Society for their approbation. Mr. Hardy, therefore, was not merely active as secretary in the progress of the convention, but was, *in his own person*, the first mover and proposer of it; and it is impossible that the jury could have honourably acquitted him upon any other principle than their total and absolute disbelief that the measure was pursued for the detestable purposes imputed by this indictment.

Gentlemen, the best way to support that judgment, and to bring you to the same conclusion, is to examine the proceedings, and to let them speak for themselves.

The Corresponding Society, upon Mr. Hardy's proposition, having, on the 27th of March 1794, adopted a resolution which they transmitted to the Constitutional Society for approbation, that Society met the next day, the 28th of March, to consider it. The resolution was sent in the form of a letter from Mr. Hardy himself, in these words:—

“I am directed by the London Corresponding Society to transmit the following resolutions to the Society for Constitutional

Information, and to request the sentiments of that Society respecting the important measures which the present juncture of affairs seems to require. The London Corresponding Society conceives that the moment is arrived when a full and explicit declaration is necessary from all the friends of freedom, whether the late ILLEGAL and unheard-of prosecutions and sentences shall determine us to abandon OUR CAUSE."

To pause here a little. Does not this incontestably show that their CAUSE (with whatever irregularity it might have been pursued) was no other than the cause of parliamentary reform? Is it not demonstration that they considered the persons convicted in Scotland as wrongfully convicted? It is not in human nature, it is beyond the flight of human impudence or folly, that men under a government of law should publicly declaim against prosecutions as illegal, tyrannical, and unheard-of, if they had either themselves considered them, or if they had been held by others to have been the regular proceedings against traitors arrested in rebellion against their country. Construing, therefore, this part of the letter as common charity and common sense must concur in the construction, and as the former jury construed it, it is no more than this,—They say to the Constitutional Society, "As we are in the progress of an honest cause—as we are pursuing a legal purpose by legal means, which others have adopted before us—shall we abandon it, terrified by the unrighteous judgments of another country? or shall we unite and persevere in its support, confiding that whatever may be the condition of *Scotland*, there is no law here in ENGLAND which can condemn us, nor any judges who can be interested in its perversion? Let us concur, therefore, in the necessity of another convention as the only legal and constitutional means of redressing the grievances which oppress us, and which can only be effectually redressed by a full and free representation of the people of Great Britain."

The crime, therefore, imputed to the Constitutional Society is only this: that, addressed in this manner by the Corresponding Society *so describing its objects*, it assented to the appointment of a committee of their society, to meet a committee appointed by the other, to consider of the proper steps to be taken for the accomplishment of the object so described.

This is the whole that can be charged upon this society, for there is no evidence whatever, even of any of its members being acquainted with the design of considering of a convention, until it came to them in the shape of a letter from Mr. Hardy, who has been acquitted; all the antecedent part being ABSOLUTELY AND ENTIRELY HIS OWN. This proposition, indeed, was so far from coming to the Constitutional Society as the members of a secret conspiracy, that it was made in the most public manner to other societies with whom they notoriously were not connected; it was

made to the Society of the Friends of the People, of which I have the honour to be a member, whose principles and conduct have been spoken of with respect throughout these proceedings. When we received their proposal we were as well acquainted with all the antecedent proceedings of the societies as the evidence makes us acquainted with them now ; and we still flatter ourselves that we were as capable of understanding the meaning of what was addressed to ourselves, as those who since then have assumed to themselves the office of decipherers ; yet, with all this knowledge, we returned an affectionate answer to these BLOODY CONSPIRATORS ; we wrote to them, that we heartily concurred with them in the objects they had in view, but differed from them in the expediency and prudence of the means by which they had proposed to give them effect. We, therefore, understood their object in the same light with the Constitutional Society—viz., the reform in the House of Commons only ; and the difference between us is reduced to a difference in judgment, as to the *means* for producing an end which in common was approved.

Gentlemen, the Constitutional Society having agreed, as I have just now stated to you, to appoint some of their members to confer with others appointed by the Corresponding Society, upon the subject of the resolution of the 27th of March, understood by them as I have explained it to you, we are brought by the evidence to the consideration of that overt act upon the record which charges these committees so appointed with the crime of high treason in these words: "That with force and arms they did traitorously consent and agree, that Jeremiah Joyce, John Augustus Bonney, John Horne Tooke, Thomas Wardle, Matthew Moore, John Thelwall, John Baxter, Richard Hodgson, John Lovett, William Sharp, and one John Pearson, should confer and meet, and co-operate together, for and towards the calling and assembling such convention for the traitorous purposes aforesaid"—i.e., as it is agreed on all hands, for subverting the Government, and deposing and destroying the King. Here another dilemma inevitably encloses the Crown ; because this charge of conferring together towards the calling a convention which was to be held for these traitorous purposes, cannot possibly be urged against these eleven persons appointed to confer together concerning it, unless the major proposition can first be established that such a traitorous convention was originally in the contemplation of those who appointed them. For these *eleven* persons are not charged as having *originated* the convention, but each prisoner in his turn is charged with having *consented and agreed* that these persons should confer together upon the means to give effect to a treason *already* hatched and contemplated, which inevitably throws them back upon Mr. Hardy, who has been acquitted ; for how, in the name of common sense, can their guilt be consistent with his

innocence? I say, this is a dilemma, because there is no road out of this absurdity but by running into another; since, to confine the guilt to the prisoners who co-operated together in exclusion of those who appointed them to do so, it must be assumed that they were *bond fide* appointed to confer towards calling a meeting which had for its real and honest object a reform in Parliament; but that they were no sooner appointed than, without the consent of those who had deputed them, they confederated to change the purpose of the deputation, and conspired among their eleven selves to form a Parliament for ruling by force of arms over this mighty kingdom.

Now, I appeal to you, gentlemen, whether there ever was a proposition so utterly out of the whole course of human affairs, as that six men of one very numerous society, and five out of another equally numerous, unanimously appointed to confer upon any given object, no matter what, should be taken without a shadow of evidence, to have in an instant departed from the trust reposed in them, and to have set on foot a secret plan which they durst not communicate even to their principals and co-conspirators, and which, with or without communication, was wholly visionary and impracticable.

Gentlemen, I know that my learned friends are incapable of publicly maintaining so preposterous a proposition; I admit that they never did maintain it, and I only state it to give to them the choice of the alternative; because either these eleven persons are only guilty from having changed the purpose of a deputation originally not traitorous, a thing admitted to be absurd and irrational, or else *all* who deputed them were traitors also. The conclusion is inevitable; because it is impossible to say that the societies who deputed them did not know their own motives and their own objects, and the supposition is further absolutely excluded by the evidence, as the committees so appointed were to do nothing of themselves, but were to report to the society at large the result of their deliberations; and reports from them were accordingly actually read at the society in the presence of many respectable members now at large, and whose names have not been even mentioned as suspected in the course of these proceedings.

It is, therefore, impossible to impute guilt to the prisoners selected for punishment, without extending it to a compass to which no man will be hardy enough to say it shall or can be extended. How many persons upon such a scale would be principals in treason, or guilty of a misprision of it? *Every man who attended the various societies throughout the kingdom, or who knew by belonging to them, that a convention was on foot.* To say nothing of the extravagance of such a wide imputation of disloyalty and rebellion, what can be more dangerous impolicy than to invite foreign nations to believe, whilst attempts are making from abroad

to destroy our constitution, that the people of England are already ripe for a revolt?

But there are inconsistencies, if possible still more glaring, to be encountered with in maintaining the charge against the prisoners selected for trial, than even in this wide extension of it to others; for if any of the few persons (*being only twelve in number*) be guilty of this treason, they must ALL be guilty; it is quite in vain to think of distinguishing or separating them; yet *some* of them are not even accused, and *others* are judicially separated from accusation. Mr. Sharp, the engraver, though one of the committee, was examined for the Crown, but not examined as an accomplice; and the bill was thrown out by the grand jury against Mr. Lovett, another of them, whom I am, therefore, entitled to consider as an innocent man, who ought not even to have been accused, and who will tell you upon his oath (for I shall call him as a witness), that there was not a syllable passed at these meetings which the King upon his throne might not have heard; that neither his name nor office were mentioned with irreverence; and Lovett, speaking for himself and for his own motives, will further solemnly tell you, that in his honest conscience he believed, that from the consequences of a timely reform in the House of Commons, *to which all their deliberations were singly directed*, the King's title would be more firm, his person more secure, his crown more illustrious, and its inheritance in his line more certain, than by seeking their support from the continuation of abuses which had so recently overturned a throne, that, propped as it was by armies and the bigotry of the people, seemed destined to endure for many generations, but which, nevertheless, undermined by its own corruptions, suddenly crumbled into dust, and shook, or, more properly, shakes at this moment the whole habitable world with its fall.

That Mr. Richter, another of the committee, and now in Newgate, meant nothing more than the reform in the House of Commons, I will prove to you by Mr. Rous, one of the most respectable men in our profession, and whose honour and veracity are above all question. He will tell you, that he saw him after the Friends of the People had refused to concur in sending delegates to the proposed convention, when Richter assured him, that in the plan they had adopted they had acted for the best, but that they were desirous to act cordially with the Friends of the People in whatever they thought the most conducive to promote the constitutional object they were engaged in. I believe, indeed, that the mass of these societies thought with many others—of which class I profess myself to be one, though I differ with them in the means—that nothing can so certainly tend to support the throne as a reform in the Commons' House of Parliament. Whether you think with them or with me on this subject is of no consequence, it is enough

if you believe that *they thought so, and honestly acted upon their opinions*; opinions which at all events were entertained and acted upon by many illustrious persons now present, some of whom I will call as the willing, and others as the unwilling witnesses to the fact.

But as the quality of their acts is best to be ascertained by the acts themselves, let us examine what the committees did, and what was done by the societies who supported them.

On the 11th of April they made their report in these words :—

“Resolved, That it appears to this committee very desirable that a general meeting or convention of the friends of liberty should be called.” For what? To depose the King? to subvert the Government? No. But, in the concluding words of the resolution, “For the purpose of taking into consideration *the proper means of obtaining a full and fair representation of the people in Parliament.*” This resolution, *after some objection to the word convention*, was adopted. Now, I desire distinctly to know why this resolution is to be perverted from its ordinary meaning any more than many similar resolutions in other times? The Lord Chief-Justice in the former trial said, in so many words, that it must be conceded to these societies, and to the prisoner Hardy, *that they set out originally upon the Duke of Richmond’s plan.* If this be so, it is for the Crown to establish *at what period and by whom* this system was abandoned, and what is the evidence of the abandonment. Does the Attorney-General mean to say that it is high treason for a number of persons collected together to make a delegation to a smaller number from among themselves for any purposes, legal or illegal? He will certainly not say that. So that in whatever view the matter for deliberation is examined, the question still returns, and must for ever return, to its only legal centre—viz., **THE OBJECT THEY HAD IN VIEW** in this delegation; and that examination cannot rationally take place but either by looking at the acts themselves, and judging of them *as they present themselves to view*, or else by showing, from *extrinsic* evidence, that they are *not* what they appear upon the surface, but are directed to concealed and wicked objects.

With regard to the first, it has been conceded from the beginning, even by the Court (as I have just observed in its charge to the grand jury), that their **AVOWED** object was a constitutional reform; and as to the last, I call aloud upon those who ask you to pronounce that a forcible subversion of the Government was intended to confess that the very idea of such a charge was disavowed and reprobated even by the very witnesses they brought forward to establish it. Upon the first trial they called a great number, who, without a single exception, one after another, positively swore that hostility to the Government, or an attack upon it by force, never entered into their contemplation; and Mr. Gibbs, as I am informed,

in my absence to-day, established the same truth by cross-examination of the Sheffield witnesses, who, with one assent, as I see from a note now before me, all declared they had been insulted and abused, which was the origin of the few pikes manufactured for their defence; and the Attorney-General appears to have been so well satisfied that the whole evidence concerning arms was "a beggarly account of empty boxes," unfit for a second introduction in so momentous a cause, that he gave up the whole of it, and we have heard not a syllable of that which assumed so grave an aspect when Hardy lately stood in judgment before you; nor has even Franklow himself, and the Loyal Lambeth Association, made their appearance. In my opinion, it was sound discretion to abandon that parole evidence. To have called people who literally knew nothing of the societies, would have been to expose weakness; to have again called honest witnesses, who knew anything, would have been to prove too much, because the falsehood of the imputation would again have been manifested; and to have attempted it a second time by spies and informers, would only have been uselessly bringing up their ragamuffins to be peppered: a conduct which sinks a cause in the opinion even of Jefferies himself; who, when Serjeant Jefferies, upon the trial of Lord Russel, said to the jury—"Remember, we bring no ignominious persons here; we have not raked the gaols for evidence; we have brought before you no scandalous SPIES AND INFORMERS, but men worthy of credit."

To say the truth, gentlemen, their parole testimony being thus subtracted, there has been brought forward in this cause no evidence, either creditable or scandalous: for, with the exception of a few papers not worth a farthing, I will undertake to collect from the coffee-houses of London a complete fac-simile of the report of both Houses of Parliament, which has consumed so many days in reading, and for no part of which, as I have noticed formerly, any author, printer, or publisher, has been ever called to account.

We have now reached the finale of the business—the great catastrophe—and it is awful to examine upon what small pivots the fate of nations depends, and to contemplate the miraculous escape of our country. The two committees agreed to meet on Mondays and Thursdays in Beaufort Buildings, and no time was to be lost; for Hessians and Hanoverians were upon them.

When the 14th of April came, which should have been their first meeting, there was no meeting at all, but a great multitude of people, of different descriptions, assembled at Chalk Farm. My learned friends, I see, are taking notes on this subject; but let them recollect that Lovett, whose case has been before the accusing jury, and who stands wholly discharged from guilt or suspicion, was chairman of this meeting, and, at the same time, a member of the committees of conference and co-operation; yet now, when the leader himself is exculpated, and not exposed even to the hazard

and inconvenience of a trial, he is to be hung to-day round the neck of the gentleman at your bar, who never was at Chalk Farm in his life; who never heard of the meeting, nor of the existence of the place it was held at, till he read it in the newspapers, as we all did, and who never saw Mr. Lovett till he met him in the Tower, when he was pointed out to him as one of the persons with whom he had long been engaged in a conspiracy. Thank God, these experiments are not only harmless, but useful:—they serve as a clue when the contrivance is more plausible.

The next Thursday after the meeting at Chalk Farm was the 17th of April. Now attend to the proceedings of these conspirators, pressed to a moment in point of time, and whose schemes were ripe for execution. Not one of them came. The 24th of April was the third Thursday, when the committee from the Corresponding Society attended, but not being met by the other, there was, of course, no conference. On the 28th of April, full three weeks after their original appointment, they at last assembled; and, after having conferred concerning the news of the day, and co-operated in taking snuff out of one another's boxes, they retired to their homes without uttering a syllable concerning the King or his Parliament. These important transactions were repeated on the 5th of May; and on Monday, May the 12th, although no *other* meeting had then been held, and though these proceedings, as I have stated them to you, had been fully investigated before the Privy Council; though the societies were constituted for purposes perfectly notorious, and long unopposed; though all their meetings had been publicly advertised, and their correspondence as open as the day, Mr. Hardy was suddenly arrested—dragged out of his bed in the night—torn from the arms of an affectionate wife, who fell a sacrifice to terror and affright, although he can *now* tell you, upon an oath accredited by his full and honourable acquittal, that he had not a conception in his mind, even after he was in the custody of the law, that high treason, or any other crime which verged towards disloyalty or rebellion was to be imputed to him.

Gentlemen, the alarm which seized upon Government at this period seems to have invested the most frivolous circumstances with mystery and design against the State, of which we have had a notable instance, in a letter written by Mr. Joyce to Mr. Tooke, on the day Hardy was arrested, which, being intercepted, was packed up into the green box there, and reserved as evidence of a plot. The letter runs thus: "Hardy and Adams were taken up this morning by a King's messenger, and all their books and papers seized;" and then, following a long dash, "CAN YOU BE READY BY THURSDAY?" This letter, gentlemen, is another lesson of caution against vague suspicions; the Red Book was not a list of persons to be saved, in opposition to the Black Book, of those to be sacrificed; but Mr. Tooke having undertaken to collect, from the "Court Calendar," a

list of the titles, offices, and pensions bestowed BY MR. PITT UPON MR. PITT, HIS RELATIONS, FRIENDS, AND DEPENDANTS, and being too correct to come out with a work, of that magnitude and extent, upon a short notice, had fixed no time for it, which induced Mr. Joyce, who was impatient for its publication, to ask if he could be ready with it by Thursday. Another curious circumstance, of similar importance, occurred about the same time, which I marvel has not appeared in evidence before you. I will tell you the story, which is so stamped with the wit which distinguishes my client, that it will speak for itself without proof. A spy came one night into the society to see what he could collect, when there happened to be present a Mr. Gay, a man of large fortune, and a great traveller (the gentleman I speak of is a member of the Friends of the People, introduced by my friend Mr. Tierney, now in my eye). This Mr. Gay, in the course of his travels, had found a stone inscribed by Mr. Stuart, another great traveller, as the end of the world; but resolving to push on farther, and to show his contempt of the bounded views of former discoveries, wrote upon it, "This is the *beginning* of the world,"—treating it as the ground from which he meant to start upon his tour. The plan being introduced for consideration while Mr. Gay was present, Mr. Tooke said, "Look ye, gentlemen, there is a person in the room disposed to go to GREATER LENGTHS than any of us would choose to follow him." This allusion to the intrepid traveller was picked up by the spy as evidence of the plot; and if I had the rummaging of the green boxes, I would undertake to find the information among the papers.

Gentlemen, in tracing, as I have done, the proceedings of the societies towards holding this convention, I have continued to follow the instructions of my client, in totally losing sight of *his* defence, in order to keep danger at a distance from *others*; for I have now only to remind you, since the fact has appeared already, that the prisoner took no share whatsoever in any of these proceedings. He considered them, indeed, to be legal, but, in his enlightened judgment, not convenient, nor likely to be attended with advantage to the object; and, therefore, when the resolution of appointing a committee was adopted, and his name was proposed as a member, he objected to it, declared he would not attend, nor have anything whatever to do with it. You may ask perhaps why, after that refusal, he suffered his name to stand upon the committee? and why he did not withdraw himself wholly from the society? In answer to that, he has told you much better than I can, as he can indeed tell you anything much better, that as he considered the proposition not to be criminal or illegal, he did not feel himself at liberty to abandon a laudable pursuit by breaking up or dividing the society for mere difference of opinion with respect to the mode of obtaining it. This conduct was manly and honourable, and it by no means stands upon Mr. Tooke's assertion :

the fact, and a most important one it is, rests upon evidence, and not upon *our* evidence (for our season of giving it is not yet arrived), but upon the evidence *relied on by the Crown for the establishment of guilt*; and which, therefore, must be wholly adopted or wholly rejected.

It will appear further, and more distinctly, that Mr. Tooke persisted in his resolution; that he was a total stranger to their proceedings; that the committee of correspondence, of which he objected to be a member, never met; and that the only reason why his name stands as a member of the committee of correspondence, which he not only did not assent to, but the formation of which he never knew, was, that it was resolved in his absence, that the committee which had before been appointed to *confer*, should also be a committee to *co-operate*; and of so little account was this same committee, that Mr. Adams, when examined for the Crown (though secretary of the society), declared upon his oath that he never had heard of it until he read it out of the book as a witness in the court.

It is evident, therefore, that the great substantive leading overt act in the indictment—viz, the conspiracy to hold a convention to subvert the Government, to which all the other charges are undoubtedly subservient—is not only not brought home to the honourable gentleman at the bar, but appears to be without foundation altogether; and it is equally evident, by the conduct of the Crown, that *they* think so; for if they had proved their charge by the evidence of the facts which belonged to it, their task was finished; and all matter, collateral or foreign, would not only have been irrelevant, but injurious to the prosecution. But, conscious that the traitorous intention could neither be legally nor rationally collected from any one fact appertaining to the subject in agitation, they have heaped matter upon matter on his head from various quarters, totally disconnected with the charge, and with one another, in order that these transactions, though singly neither treason nor any other crime, might, when tacked together, amount to whatever might be found necessary to destroy him. In this manner that unfortunate statesman, Lord Strafford, was sacrificed; but the shameful violation of the law of England, which alone could have supported his condemnation, has ever been spoken of with detestation by every lawyer, of whatever party, who has lived since his trial; and what is the next evidence of its turpitude and illegality, has been considered as a blot in the page of English history by historians of all parties and opinions, Mr. David Hume, a man not to be named as a compiler of mere facts, but as a profound politician and philosopher, speaks of it in the manner which I will read to you, notwithstanding his leaning to high and arbitrary principles of government. In his sixth volume, page 431, speaking of Lord Strafford's attainder, he says, "As this species of treason, *discovered*

by the Commons" (the Commons have also the merit of discovering this), "is entirely new and unknown to the laws; so is the species of proof by which they pretend to fix that guilt upon the prisoner. They have invented a kind of *accumulative* or *constructive* evidence, by which many actions, either totally innocent in themselves, or criminal in a much inferior degree, shall *when united* amount to treason, and subject the person to the highest penalties inflicted by the law. A hasty and unguarded word, a rash and passionate action, assisted by the malevolent fancy of the accuser, and tortured by doubtful constructions, is transmuted into the deepest guilt; and the lives and fortunes of the whole nation, *no longer protected by justice, are subjected to arbitrary will and pleasure.*"

Gentlemen, it may be said that the shameful case I have cited is not like the present. Certainly it is not, for the unguarded words which the historian reprobates the enhancing into treason were the unguarded words of *Lord Strafford himself*; the rash writings were *his* writings; and the passionate actions were *his own*. But what is accumulated and lifted up into treason against the prisoner to-day are the unguarded words, the rash writings, and the passionate actions of *others*; of some with whom he differed, of many whom he never saw, and mostly of those to whose very existence he was a stranger.

Gentlemen, I have no fears for my client; but in what language shall I speak of this dreadful principle for the benefit of my country? I will speak of it in the language of the innocent victim to them—in the eloquent words of Lord Strafford himself upon his trial:—

"Where has this species of guilt lain so long concealed?" said Strafford, in conclusion; "where has this fire been so long buried, during so many centuries, that no smoke should appear till it burst out at once to consume me and my children? Better it were to live under no law at all, and, by the maxims of cautious prudence, to conform ourselves, the best we can, to the arbitrary will of a master, than fancy we have a law, on which we can rely, and find at last that this law shall inflict a punishment precedent to the promulgation, and try us by maxims unheard-of till the very moment of the prosecution. If I sail on the Thames and split my vessel on an anchor, in case there be no buoy to give warning, the party shall pay me damages; but if the anchor be marked out, then is the striking on it at my own peril. Where is the mark set upon this crime? where the token by which I should discover it? It has lain concealed under water; and no human prudence, no human innocence, could save me from the destruction with which I am at present threatened.

"It is now full two hundred and forty years since treasons were defined; and so long has it been since any man was touched to this extent, upon this crime, before myself. We have lived, my Lords, happily to ourselves at home; we have lived gloriously

abroad to the world : let us be content with what our fathers have left us ; let not our ambition carry us to be more learned than they were in these killing and destructive arts. Great wisdom it will be in your Lordships, and just providence for yourselves, for your posterities, for the whole kingdom, to cast from you into the fire these bloody and mysterious volumes of arbitrary and constructive treasons, as the primitive Christians did their books of curious arts, and betake yourselves to the plain letter of the statute, which tells you where the crime is, and points out to you the path by which you may avoid it.

" Let us not, to our own destruction, awake those sleeping lions by rattling up a company of old records, which have lain for so many ages by the wall, forgotten and neglected. To all my afflictions, add not this, my Lords, the most severe of any, that I, for my other sins, not for my treasons, be the means of introducing a precedent so pernicious to the laws and liberties of my native country.

" However, these gentlemen at the bar say they speak for the commonwealth ; and they believe so : yet, under favour, it is I who, in this particular, speak for the commonwealth. Precedents, like those which are endeavoured to be established against me, must draw along such inconveniences and miseries, that, in a few years, the kingdom will be in the condition expressed in a statute of Henry IV., and no man shall know by what rule to govern his words and actions."

Proud as I am of being a subject of this country, my duty compels me to remind you, that all this splendour of truth and eloquence was unavailing before an abandoned tribunal, which had superseded all the rules of law and the sober restraints of justice, and which could listen unmoved to even these concluding words : " My Lords, I have troubled your Lordships a great deal longer than I should have done. Were it not for the interest of these pledges which a saint in heaven left me, I should be loath "—" Here," says the historian, " he pointed to his children, and his weeping stopped him "—And if I were to attempt to proceed further in this melancholy page, my tears would stop me also.

But let us look to what followed from these proceedings : they were condemned and reversed, and stand recorded as a beacon to future generations. The act recites, " That the turbulent party, seeing no hopes to effect their unjust designs by ordinary way or method of proceedings, did at last resolve to attempt the destruction and attainder of the said Earl by an Act of Parliament to be therefore purposely made to condemn him *upon accumulative treason—none of the pretended crimes being treason apart, and so could not be in the whole*, if they had been proved, as they were not. Therefore it is enacted, that all records and proceedings relating to the said attainder be wholly cancelled, and taken off the file, to the

intent that the same may not be visible in after-ages, or brought into example, to the prejudice of any person whatsoever."

A similar fate attended the attainders of Lord Russel and Sidney, and will, sooner or later, attend every flagrantly unjust judgment, whilst England preserves her free constitution; and, therefore, notwithstanding the ridiculous figure too frequently made by modern prophets, whose prophetic writings remain unfulfilled after the period of their fulfilment, I will hazard this public prediction—That long, long before one-half of the audience which fills these benches shall, by the course of nature, be called from the world, these very judgments in Scotland, which more than anything else, have produced the present trial, will be stigmatised, repealed, and with indignation reversed; not by violence or in irregular convention, but in the ordinary legal forms of a British Parliament.

The Attorney-General will perhaps say, that the collateral facts are not established in order to be accumulated into guilt, as in the case of Lord Strafford; that he disavows (which I admit, to his honour, he most distinctly did) all accumulations and constructive treasons, but that he establishes them to manifest the intention, which led to the transaction charged upon the record. Be it so, provided they *do* lead distinctly to that manifestation. But let us shortly examine them; and then, if the rules of the Court would permit me, I would not only ask of you twelve men, but of every man, ay, and of every woman within the reach of my voice, whether they would kill a fly upon them; yet you are asked to devote to destruction upon them the honourable gentleman who now stands before you.

The collateral facts, as my memory serves me to recollect them, and from whence the traitorous intention is to be inferred, are, that Mr. Tooke contributed to the circulation of the works of Thomas Paine, containing gross matter against the monarchy of the country; that he consented to send a congratulatory address to the Convention of France; that he was privy to the approbation of Mr. Joel Barlow, who had delivered this congratulation at Paris; and lastly, that he had himself written a letter to the president of the convention, offering to subscribe 4000 livres towards carrying on the war then existing between the states of Europe and France, even though part of it, in the event, should happen to be applied when this country should be involved in the same contest.

Gentlemen, though I feel myself very much exhausted, I have strength enough left just to touch upon these matters in their order.

With regard to the first, I am surprised that the history of Mr. Paine's writings, and the approbation they met with, as connected with the new constitution of France, are so very little understood; and it is necessary to understand it, to account for the assent and encouragement which many persons, attached to the free constitu-

tion of Great Britain, were *forced* to bestow upon many parts of a work, though written undoubtedly by an author who was an enemy to its principles.

Gentlemen, it happened that when France threw off the galling yoke of arbitrary monarchy, which had been attended with such infinite evils to herself, and which had produced so many calamities to Great Britain, a very general exultation pervaded this country; and surely it was a natural theme of exultation to the inhabitants of a country which had given light and freedom for ages to the world, to see so large a portion of the human race suddenly emancipated from a bondage not only ignominious to France, but dangerous to this island. They recollected the desolating wars which her ambition had lighted up, and the expensive burdens which our resistance to them had entailed upon us; they felt also, in the terrible disasters of France, a just pride in the wisdom of our forefathers, and a wholesome lesson to the present age and posterity not to degenerate from their example. They saw France falling a victim to the continuation and multiplication of those abuses in government which our wise progenitors had perpetually mitigated by temperate and salutary reformations, and they saw, therefore, nothing to fear from the contagion of her disorders; her arbitrary State, her superstitious Church, had undergone no alterations, and for want of those repairs which the edifices of civil life equally require with material structures, they crumbled suddenly into dust; whereas, by the fortunate coincidence of accident, as much as by the exertions of wisdom and virtue, *our* condition had been slowly and progressively ameliorated, our civil power had been tempered and moderated, and our religion purified and reformed; the condition of civil life had changed and bettered under their influence, and the country had started up even amid revolution with superior security and illustration.

Gentlemen, these reflections were not merely the silent, but the avowed expressions of some of the first persons in England, on the first burst of the French Revolution, and, I verily believe, the same sensations diffused themselves widely throughout the kingdom; but, very unfortunately for France, for England, for Europe, and for humanity, this sensation, the natural result of freedom and independence, was not universally felt. Very unfortunately the powers of Europe would not yield to an independent nation the common right of judging for itself in its own concerns, nor in prudence leave to it the good and evil of its own government. All Europe combined against France, and levied war against her infant constitution. The despots of the earth, with whom the King of Great Britain had no common interest, trembling for their own rotten institutions, and looking to the wrongs and sufferings of their subjects, drew the sword (as was natural for despotism to draw it) to dispute the right of a people to change their ancient institutions.

This very combination naturally assimilated with the patriotism of France the public spirit of England, since our own revolution was supported upon no other foundation than the principle which was not only denied, but was by violence to be exterminated; and many persons, therefore, notoriously attached to the British Government, expressed their reprobation of this conspiracy against the freedom of the world. This honest and harmless enthusiasm, however, met with a very sudden, and, in its consequences, an unfortunate check. A gentleman, of the first talents for writing in the world, composed a book, I am bound to believe with an honourable mind, but a book which produced a more universal and more mischievous effect than any which perhaps our own or any other times have produced. When Mr. Burke's book upon the French Revolution was first published, at which period our Government had taken no active part against it, no man assimilated the changes of France to the condition of our country; no man talked of, or figured in his imagination, a revolution in England, which had already had her revolution, and had obtained the freedom which France was then struggling to obtain. Did it follow, because men rejoiced that France had asserted her liberty, that they thought liberty could exist in no other form than that which France had chosen? Did it follow, because men living under the Government of this free country, condemned and reprobated the dangerous precedent of suffering the liberty of any nation to be overborne by foreign force; did it follow from thence that they were resolved to change for the accidental and untried condition of France, the ancient and tried constitution of our own country? I feel within myself that I can rejoice, as I do rejoice, in the liberty of France, without meaning to surrender my own, which, though protected by other forms, and growing out of far more fortunate conjunctures, stands upon the same basis, of the right of a people to change their government and be free. Can any man in England deny this? Yes, gentlemen, Mr. Burke has denied it; and that denial was the origin of Mr. Paine's book. Mr. Burke denied, positively and in terms, that France had any right to change her own government, and even took up the cudgels for all the despots of Europe, who at the very time were levying a barbarous, scandalous, and oppressive war, to maintain the same proposition by the sword.

This work brought forward again, after a long silence, Mr. THOMAS PAINE, who was indeed a republican beyond all question, but who had become so in consequence of the same corrupt and scandalous attempt to beat down by force the liberties of a nation; he became a republican in consequence of the similar and lamentable contest between Great Britain and America, and it is rather a curious circumstance that THIS VERY MR. BURKE, who considers Mr. Paine as a man not to be reasoned with, but only to be au-

swered by criminal justice, and who condemns as a traitor every man who attempts to name him,—HIMSELF expressed his approbation of the very same doctrines published by Mr. Paine, when Mr. Burke himself was pleading the cause of a nation determined to be free; not the cause of a *foreign* nation which had always been *independent*, but the cause of colonial America, in open war and rebellion against the Crown and Parliament of Great Britain. Mr. Paine, during the same crisis, wrote his book called "Common Sense," addressed to the Americans in arms against England, exciting them to throw off the yoke of the mother-country, and to declare their independence. Gentlemen, from having defended Mr. Paine upon his trial for writing his later work, which Mr. Tooke is accused of having approved; I am of course intimately acquainted with its contents, and with those of his former writings; and I take upon me to say, that every offensive topic against monarchy, and all the principles of the rights of man, now regarded with such horror, are substantially, and in many instances almost *verbatim*, to be found in the former publication. When Mr. Paine wrote his "Common Sense," Acts of Parliament had declared America to be in a state of rebellion, and England was exerting every nerve to subdue her; yet at that moment Mr. Burke, not in his place in Parliament, where his words are not to be questioned, but in a pamphlet publicly circulated, speaks of this book, "Common Sense," by name, notices the powerful effect it had upon the mind of America in bringing them up to emancipation, and acknowledges that, if the facts assumed by the author were true, his reasonings were unanswerable. In the same pamphlet, several parts of which I stated to the former jury, he declared that he felt every victory obtained by the King's arms against America as a blow upon his heart; he disclaimed all triumph in the slaughter and captivity of names which had been familiar to him from his infancy, and, with all the splendour of his eloquence, expressed his horror that they had fallen under the hands of strangers, whose barbarous appellations he scarcely knew how to pronounce. Gentlemen, I am not censuring Mr. Burke for these things; so far from it, that they sanctify his character with me, and ever prevent me from approaching him but with respect. But let us, at least, have equal justice. While these writings continue the object of admiration, and their author is held forth as the champion of our constitution, let not Mr. Tooke stand a prisoner at the bar of the Old Bailey for having, in time of profound peace with France, and when every speech from the British throne breathed nothing but its continuance, expressed only the same detestation of the exertions of foreign despotism against freedom, which the other did not scruple, in a similar cause, and in the time of open war, to extend to the exertions of his country.

To expose further the extreme absurdity of this accusation, if it

be possible further to expose it, let me suppose that we were again at peace with France, while the other nations who are now our allies should continue to prosecute the war:—would it *then* be criminal to congratulate France upon her successes against them? When that time arrives, might I not honestly wish the triumph of the French arms? and might I not lawfully express that wish? I know, certainly, that I might, and I know, also, that I would. I observe that this sentiment seems a bold one; but who is prepared to tell me that I shall not? I WILL assert the freedom of an Englishman; I WILL maintain the dignity of man; I WILL vindicate and glory in the principles which raised this country to her pre-eminence among the nations of the earth; and as she shone the bright star of the morning, to shed the light of liberty upon nations which now enjoy it, so may she continue in *her radiant sphere*, to revive the ancient privileges of the world, which have been lost, and still to bring them forward to tongues and people who have never yet known them in the mysterious progression of things!

It was the denial of these rights of men, which Englishmen had been the first to assert, that provoked Mr. Paine to write his book upon the French Revolution, but which was written when we were not only at peace with France, but when she was holding out the arms of friendship to embrace us. We have subpoenaed the officer of the House of Lords to attend with the correspondence between Lord Grenville and Mr. Chauvelin, long, long after that period, in which you will find an absolute denial of enmity, and professions of peace and friendship, the sincerity of which declarations had been uniformly experienced by our countrymen in France, who had been received with affection, cordiality, and respect. I admit that the work of Paine contained at the same time strong and coarse reflections against the system of the British Government; but Mr. Tooke not only disapproved of those parts of the book, but expressed his disapprobation of them to the author. He repeatedly argued with him the merits of our Government, and told him plainly that he had disfigured his work by the passages which applied to England, and which were afterwards selected for prosecution. Is it fair to pronounce, then, against the whole tenor of life and conversation, that Mr. Tooke approved of the destruction of monarchy, because he promoted the circulation of a book, nine-tenths of which was wholly collateral to the subject, and which contained important and valuable truths, consistent with, and even tending to its preservation? Only twelve pages of Mr. Paine's book were ever selected as inimical to the constitution, whilst above two hundred contain reflections which, if properly attended to, might secure it from the very attack he makes upon it in the rest.

Let us try Mr. Burke's work by the same test. Though I have no doubt it was written with an honest intention, yet it contains,

in my mind, a dangerous principle, destructive of British liberty. What then? Ought I to seek its suppression? Ought I to pronounce him to be criminal who promotes its circulation? So far from it, that I shall take care to put it into the hands of those whose principles are left to my formation. I shall take care that they have the advantage of doing, in the regular progression of youthful study, what I have done even in the short intervals of laborious life; that they shall transcribe with their own hands from all the works of this most extraordinary person, and from the last, among the rest, the soundest truths of religion, the justest principles of morals, inculcated and rendered delightful by the most sublime eloquence—the highest reach of philosophy brought down to the level of common minds, by the most captivating taste—the most enlightened observations on history, and the most copious collection of useful maxims, from the experience of common life. All this they shall do, and separate *for themselves* the good from the evil, taking the one as far more than a counterpoise to the other.

Gentlemen, Mr. Tooke had an additional and a generous motive for appearing to be the supporter of Mr. Paine—the Constitution was wounded through his sides. I blush, as a Briton, to recollect, that a conspiracy was formed among the highest orders, to deprive this man of a British trial. This is the clue to Mr. Tooke's conduct, and to which, if there should be no other witness, I will step forward to be examined—I assert that there was a conspiracy to shut out Mr. Paine from the privilege of being defended: he was to be deprived of counsel; and I, who now speak to you, was threatened with the loss of office if I appeared as his advocate—I was told, in plain terms, that I must not defend Mr. Paine. I did defend him, and I did lose my office.*

It was upon this occasion that Mr. Tooke interfered. Mr. Paine was not in circumstances to support the expense of his trial, and Mr. Tooke became a subscriber to his defence, though he differed from him, as I have told you, in the application of his principles to the British Government, and had both publicly and privately expressed that difference. That Mr. Tooke's approbation of Mr. Paine's work, and of the French Revolution, were founded upon no disgust to our own constitution, was manifested in the most public manner at the very same period. A meeting was held at the Crown and Anchor, not called by Mr. Tooke, but at which he was present, to celebrate the first anniversary of the French Revolution, where a noble Lord (Earl Stanhope) was in the chair, and a motion was made, "That this meeting does most cordially rejoice

* When Paine was brought to trial, Lord Erskine (then Mr. Erskine) was Attorney-General to the Prince of Wales, and was removed; but his Royal Highness afterwards appointed him his Chancellor, which office he held till he received the Great Seal from the King.

in the establishment and confirmation of liberty in France, and that it beholds, with peculiar satisfaction, the sentiments of amity and good-will which appear to pervade the people of that country towards this, especially at a time when it is the manifest interest" (*as God knows it is*) "of both states, that nothing should interrupt the harmony between them, which is so essential to the freedom and happiness, not only of both nations, but of all mankind." Mr. Horne Tooke—and I do not think, after I have read this, that I shall be suffered to go on making any more remarks on this part of the subject, because it is a key of the whole—Mr. Horne Tooke begged that the honourable gentleman, who was the mover, would add to his motion some qualifying clause, to guard against misunderstanding and misrepresentation; that there was a very wide difference between England and France; that the state-vessel of France had been not only tempest-beaten and shattered, but absolutely bulged; whereas, in England, we had a noble, stately, and sound vessel, sailing prosperously upon the bosom of the ocean; that it was true, after so long a course, she might, upon examination, appear somewhat foul at the bottom, and require some necessary repairs, but that her main timbers were all sound. He therefore regretted that there should be an addition to the motion, but that, if that addition was not made, he should move it himself—accordingly, he did move in public, "that this meeting feel equal satisfaction, that the people of England, by the virtuous exertions of their ancestors, have not so hard a task to perform as the French are engaged in, but have only to maintain and improve the constitution which their ancestors have transmitted to them." When Mr. Tooke moved this amendment, he did it in THE FACE OF THE WHOLE COUNTRY, and published, of course, to all mankind, those opinions, which I will prove to have been uniformly his—if indeed it is necessary to prove them, when the Attorney-General has been so liberally wasting his strength in proving them, for the last three days. Mr. Tooke, when he proposed this motion, was acting upon the ordinary principle of his life, which, for his own satisfaction, rather than for yours, I shall prove from year to year. I will take him up in the year 1780, and bring him down to the very time when he comes to your bar, and show that he has ever been steadfast in favour of the pure, uncorrupted constitution of Great Britain, *but a mortal enemy to its abuses.*

This disposition is so far from being dangerous to public tranquillity, that it is its surest and its best support. Would you prevent the infection of French Government from reaching this country, give to the people the practical blessings of their own. It is impossible to subdue the human mind by making war against opinions; it may succeed for a season, but the end thereof is death. Milton has truly said, that a forbidden book is a spark of truth that flies up in the face of him who seeks to tread it out; and

that a Government which seeks its safety in the suppression of the press by sanguinary penalties, is like the gentleman who heightened the wall of his park to keep out the crows. The human mind cannot be imprisoned; it is impassive and immortal: reform, therefore, the abuses which obscure the constitution, and I will answer for its safety. Above all other things, let men feel and enjoy the impartial protection of mild and equal laws. Thanks be to God, we have lately felt and enjoyed them in this place, and our constitution stands the firmer from the event; whilst in other countries, at the same moment, the dominion of persecution and terror has made revolution follow upon revolution, and filled the earth with blood and desolation.

Gentlemen, I will now lay before you Mr. Tooke's political sentiments when they could not possibly be written to serve a purpose; and I hope his Lordship will permit Mr. Gibbs to read them, as my voice and strength begin to fail me.

LORD CHIEF-JUSTICE EYRE. What is it?

MR. ERSKINE. A piece of evidence I have to offer. I am too much exhausted to read it.

LORD CHIEF-JUSTICE EYRE. If you wish to refresh yourself, sit down; we will wait patiently, but we should know what it is.

MR. ERSKINE. I have nearly finished. It is a letter written to Lord Ashburton, who formerly, your Lordship knows, was the celebrated Mr. Dunning, who was engaged in a reform of Parliament; and Mr. Horne Tooke wrote this letter to him upon the subject of parliamentary reform in the year 1782.

[MR. GIBBS *here read the following extract.*]

"By the vote of the House of Commons on Tuesday last, Parliament, it seems, do not yet think it necessary to take into consideration the state of representation in this country. However, my Lord, notwithstanding that vote, I am still sanguine enough to believe that we are at the eve of a peaceful revolution, more important than any which has happened since the settlement of our Saxon ancestors in this country, and which will convey down to endless posterity all the blessings of which political society is capable.

"My Lord, my expectations are greatly raised, instead of being depressed, by the objections which were urged against Mr. Pitt's motion.

"One gentleman says, '*He cannot see any good purpose the motion would answer, for it would not assist Government with a ship, a man, or a guinea, towards carrying on the war with vigour or towards establishing that much-wished-for object, peace.*'

"My Lord, I hope the measure will be made to produce to Government both *ships* and *men* and *guineas*. For they would be very poor politicians, indeed, who could not in one measure comprehend many purposes; and still poorer, who should miss the

present opportunity of obtaining, by this one measure of reform, every desirable object of the State.

"Another gentleman apprehends that '*nothing less than giving every man in the kingdom a vote would give universal satisfaction.*'

"My Lord, I trust that there are very few persons in the kingdom who desire so improper and impracticable a measure. But, if there were many, the wisdom of Parliament would correct their plan, and the corrected would be well pleased at the correction.

"My Lord, I shall not waste a word to show the necessity of a reform in the representation of this country. I shall only consider the mode of reform, and endeavour to show that it is not difficult to embrace every interest in the State, and to satisfy well-meaning men of every description. To this end I am compelled first to remove the prejudices, and indeed, *just objections*, which some persons entertain to all the modes of reform which have hitherto been recommended.

"My virtuous and inestimable friend, Major Cartwright, is a zealous and an able advocate for *equal* and *universal* representation—that is, for an *equal* and *universal* share of every man in the government. My Lord, I conceive his argument to be this: Every man has an equal right to freedom and security. No man can be free who has not a voice in the framing of those laws by which he is to be governed. He who is not represented has not this voice; therefore, every man has an equal right to representation, or to a share in the government. His final conclusion is, that every man has a right to an equal share in representation.

"Now, my Lord, I conceive the error to lie *chiefly* in the conclusion. For there is a very great difference between having an *equal right to a share*, and a *right to an equal share*. An estate may be devised by will amongst many persons in different proportions; to one five pounds, to another five hundred, &c.: each person will have an equal right to his share, but not a right to an equal share.

"This principle is further attempted to be enforced by an assertion, that 'the all of one man is as dear to him as the all of another man is to that other.' But, my Lord, this maxim will not hold by any means; for a small all is not, for very good reasons, so dear as a great all. A small all may be lost, and easily regained; it may very often, and with great wisdom, be risked for the chance of a greater; it may be so small as to be little or not at all worth defending or caring for. *Ibi eo qui sonam perdidit.* But a large all can never be recovered; it has been amassing and accumulating, perhaps from father to son for many generations, or it has been the product of a long life of industry and talents, or the consequence of some circumstance which will never return. But I am sure I need not dwell upon this, without placing the extremes of fortune in array against

each other. Every man whose all has varied at different periods of his life, can speak for himself, and say whether the dearness in which he held these different alls was equal. The lowest order of men consume their all daily, as fast as they acquire it.

"My Lord, justice and policy require that benefit and burden, that the share of power and the share of contribution to that power, should be as nearly proportioned as possible. If aristocracy will have all power, they are tyrants and unjust to the people, because aristocracy alone does not bear the whole burden. If the smallest individual of the people contends to be equal in power to the greatest individual, he too is in his turn unjust in his demands, for his burden and contribution are not equal.

"Hitherto, my Lord, I have only argued against the *equality*. I shall now venture to speak against the *universality* of representation, or of a share in the government, for the terms amount to the same.

"Freedom and security ought surely to be equal and universal. But, my Lord, I am not at all backward to contend that some of the members of a society may be *free* and *secure*, without having a share in the government. The happiness, and freedom, and security of the whole, may even be advanced by the exclusion of some, not from freedom and security, but from a share in the government."

MR. ERSKINE. These are Mr. Tooke's sentiments, and they speak for themselves, without any commentary. It is very fortunate for me, therefore, as well as for the unfortunate gentleman whom I represent, that the subject of his defence is almost exhausted because I myself am entirely so; and surely that circumstance must present in the strongest colours to men of your justice and discernment the fatal precedent of such a trial, since if I were even capable of grasping in my mind more matter than the greatest reach of human thought and memory could comprehend, the bodily strength of the strongest man would sink under the delivery.

I have been placed here, as you know, in a most arduous and anxious situation for many days during the late trial. I have had no opportunity of rest in the interval, but have been called incessantly to the other labours of my profession, and am now brought back again to the stake without the refreshment which nature requires, for it must be a dishonest mind which could feel the tranquillity necessary for its reception. I came into court this morning perfectly subdued with fatigue and agitation, and although I know the disposition of my honourable and learned friends to have left me at home till the season arrived for the defence of the prisoner, yet amid the chaos of matter which the fulfilment of their duty obliged them to lay before you, it was impossible for them to know, within even hours, the time I should be wanted. I hope, however, that amidst all these pressures I

have been able to lay before you sufficient information for the discharge of your duty to the prisoner and to the public. The matter for your consideration being a mere matter of fact—*Has the prisoner at the bar conspired, with others, to depose the King, and to subvert by force the Government of the kingdom?*

The sentiments of Mr. Tooke upon the subject of our excellent Government, which my learned friend, Mr. Gibbs, has just read to you, would in themselves be sufficient to expose the falsehood of the charge. The publication cannot be considered as a pretext, because they have ever been uniformly supported by his conduct. One of the most honourable men in this country, now present, will prove to you that he acted upon these principles at the time he published them, and offered all his influence and exertions to promote Mr. Pitt's plan, which was then in agitation; and I will lead him on in your view, day by day, from that period till within a fortnight of his apprehension for his supposed treason. Mr. Francis, a most honourable member of the House of Commons, and one of the society called the Friends of the People, having suggested a plan for the reform of Parliament, which appeared to him to be moderate and reasonable, applied to Mr. Tooke, who was then supposed to be plotting the destruction of his country, to give him his assistance upon it. Mr. Tooke's answer was this—"One-fifth or one-tenth, nay, one-twentieth part, of what you are asking will be a solid benefit, and I will give it my support." Mr. Francis will tell you this upon his oath, and he will add, what he has told me repeatedly in private, that he grew in his esteem from the candid and explicit manner in which he made this declaration. Mr. Sharp has also proved, that at the very time when all this scene of guilt is imputed, Mr. Tooke was uniformly maintaining the same sentiments in the most unreserved confidence of private friendship. I could go on, indeed, calling witness after witness throughout the wide-extended circle of all who have ever known him, that a firm and zealous attachment to the British Government, *in its uncorrupted state*, has been the uniform and zealous tenor of his opinions and conduct; yet in the teeth of this evidence of a whole life, you are called upon, on your oaths, to shed his blood, by the verdict you are to give in this place.

Gentlemen, I cannot conclude without observing that the conduct of this abused and unfortunate gentleman throughout the whole of the trial, has certainly entitled him to admiration and respect. I had undoubtedly prepared myself to conduct his cause in a manner totally different from that which I have pursued: it was my purpose to have selected those parts of the evidence only by which he was affected, and, by a minute attention to the particular entries, to have separated him from the rest. By such a course I could have steered his vessel safely out of the storm, and brought her, without damage, into a harbour of safety, while

the other unfortunate prisoners were left to ride out this awful tempest. But he insisted in holding out a rope to save the innocent from danger ; he would not suffer his defence to be put upon the footing which discretion would have suggested. On the contrary, though not implicated himself in the alleged conspiracy, he has charged me to waste and destroy my strength to prove that no such guilt can be brought home to others. I rejoice in having been made the humble instrument of so much good ; my heart was never so much in a cause.

You may see that I am tearing myself to pieces by exertions beyond my powers—I have neither voice nor strength to proceed further. I do not, indeed, desire to conciliate your favour, nor to captivate your judgments by elocution in the close of my discourse ; but I conclude this cause, as I concluded the former, by imploring that you may be enlightened by that Power which can alone unerringly direct the human mind in the pursuit of truth and justice.

*CASE of the BISHOP OF BANGOR and others, indicted for a riot
and an assault. Tried at Shrewsbury Assizes on the 26th of
July 1796.*

THE SUBJECT.

THE indictment was preferred against the Lord Bishop of Bangor, the Rev. Dr. Owen, the Rev. John Roberts, the Rev. John Williams, and Thomas Jones, gent.; and was prosecuted by Samuel Grindley, the deputy-registrar of the Bishop's Consistorial Court.

The indictment charged that Samuel Grindley, the prosecutor, was deputy-registrar of the Consistorial Court of the bishopric of Bangor, and that being such, he had of right the occupation of the registrar's office adjoining to the cathedral; that the Bishop and the other defendants, intending to disturb the prosecutor in the execution of his office, and to trouble the peace of the King, unlawfully entered into the office, and stayed there for an hour, against the will of the prosecutor; and it further charged that they made a disturbance there against the King's peace, and assaulted Grindley, so being registrar, with intent to expel him from the office.

The indictment was originally preferred in the Court of Great Sessions, in Wales, where the offence was charged to have been committed, but for a more impartial hearing was removed into the Court of King's Bench, and sent down for trial in the next adjoining county, before a special jury at Shrewsbury, where Mr. Adam and Mr. Erskine attended on special retainers; the former as counsel for the prosecution, and the latter for the bishop and the other defendants.

[After the examination of the witnesses, and the close of the prosecutor's case, Mr. ERSKINE spoke as follows:—]

GENTLEMEN OF THE JURY,—My learned friend, in opening the case on the part of the prosecution, has, from personal kindness to me, adverted to some successful exertions in the duties of my profession and particularly in this place. It is true, that I have been in the practice of the law for very many years, and more than once, upon memorable occasions, in this court; yet, with all the experience which, in that long lapse of time, the most inattentive man may be supposed to have collected, I feel myself wholly at a loss in what manner to address you. I speak unaffectedly when I say, that I never felt myself in so complete a state of embarrassment in the course of my professional life; indeed, I hardly know how to

collect my faculties at all, or in what fashion to deal with this most extraordinary subject. When my learned friend, Mr. Adam, spoke for *himself*, and from the emanations of as honourable a mind as ever was bestowed upon any of the human species, I know that he spoke the truth when he declared his wish to conduct the cause with all clarity, and in the true spirit of Christianity. But his duties were scarcely compatible with his intentions; and we shall therefore, have, in the sequel, to examine how much of his speech was *his own* candid address, proceeding from *himself*; and what part of it may be considered as arrows from the quiver of his CLIENT. The cause of the Bishop of Bangor can suffer nothing from this tribute, which is equally due to friendship and to justice. On the contrary, I should have thought it material, at any rate, to advert to the advantage which Mr. Grindley might otherwise derive from being so represented. I should have thought it right to guard you against blending the client with the counsel. It would have been my duty to warn you, not to confound the one with the other, lest, when you hear a liberal and ingenuous man, dealing, as he does, in humane and conciliating expressions, and observe him with an aspect of gentleness and moderation, you might be led by sympathy to imagine that such were the feelings, and that such had been the conduct, of the man whom he represents. On the contrary, I have no difficulty in asserting, and I shall call upon his Lordship to pronounce the law upon the subject. That you have before you a prosecution, set on foot without the smallest colour or foundation—a prosecution, hatched in mischief and in malice, by a man, who is, by his own confession, a disturber of the public peace; supported throughout by persons who, upon their own testimony, have been his accomplices, and who are now leagued with him in a conspiracy to turn the tables of justice upon those who came to remonstrate against their violence, who honestly, but vainly, endeavoured to recall them to a sense of their duty, whose only object was to preserve the public peace, and to secure even the sanctuaries of religion from the violation of disorder and tumult.

What, then, is the cause of my embarrassment? It is this. In the extraordinary times in which we live; amidst the vast and portentous changes which have shaken, and are shaking the world; I cannot help imagining, in standing up for a defendant against such prosecutors, that the religion and order, under which this country has existed for ages, had been subverted; that anarchy had set up her standard; that misrule had usurped the seat of justice, and that the workers of this confusion and uproar had obtained the power to question their superiors, and to subject them to ignominy and reproach, for venturing only to remonstrate against their violence, and for endeavouring to preserve tranquillity, by means not only hitherto accounted legal, but which the law has immemorially exacted as an INDISPENSABLE DUTY from all the subjects

of this realm. Hence, it really is, that my embarrassment arises ; and, however this may be considered as a strong figure in speaking, and introduced rather to captivate your imaginations than gravely to solicit your judgments, yet let me ask you, Whether it is not the most natural train of ideas that can occur to any man, who has been eighteen years in the profession of the English law ?

In the first place, gentlemen, who are the parties prosecuted and prosecuting ? What are the relations they stand in to each other ? What are the transactions, as they have been proved by themselves ? What is the law upon the subject ? And what is the spirit and temper, the design and purpose of this nefarious prosecution ?

The parties prosecuted are the right reverend prelate, whose name stands first upon the indictment, and three ministers and members of his church, together with another, who is added (I know not why) as a defendant. The person prosecuting is—(how shall I describe him ?)—for surely my learned friend could not be serious when he stated the relation between this person and the Bishop of Bangor. He told you, most truly—which renders it less necessary for me to take up your time upon the subject—that the bishop is invested with a very large and important jurisdiction ; that by the ancient laws of this kingdom, it extends to many of the most material objects in civil life—that is, has the custody and recording of wills, the granting of administrations, and a jurisdiction over many other rights of the deepest moment to the personal property of the King's subjects. He told you, also, that all these complicated authorities, subject only to the appellate jurisdiction of the metropolitan, are vested in the bishop : to which he might have added (*and would, no doubt, if his cause would have admitted the addition*), that THE BISHOP HIMSELF, and not his temporary clerk, has, in the eye of the law, the custody of the records of his church, and that he also is the person whom the law looks to for the due administration of everything committed to his care ; his subordinate officers being, of course, responsible to *him* for the execution of what the law requires at *his* hands.

As the King himself, who is the fountain of all jurisdictions, cannot exercise them himself, but only by substitutes, judicial and ministerial, to whom, in the various subordinations of magistracy, his executive authority is delegated ; so in the descending scale of ecclesiastical authority, the bishop also has *his* subordinates to assist him judicially, and who have again *their* subordinate officers and servants for the performance of those duties committed by law to the bishop himself ; but which he exercises through the various deputations which the law sanctions and confirms.

The Consistory Court, of which this man is the deputy-registrar, is the Bishop's Court. For the fulfilment of its duties the law has allowed him his chancellor and superior judges, who have under

them, in the different ecclesiastical divisions, their surrogates, who have, again, their various subordinates; the *lowest*, and *last*, and *least* of whom is the prosecutor of this indictment; who, nevertheless, considers the Cathedral Church of Bangor and the Court of the Bishop's see, as his *OWN CASTLE*; and who, under that idea, asserts the possession of it, *even to the exclusion of the bishop himself*, by violence and armed resistance! Do you wonder now, gentlemen, that I found it difficult to handle this preposterous proceeding? The registrar himself (putting deputation out of the question) is the very lowest, last, and least of the creatures of the bishop's jurisdiction; without a shadow of jurisdiction himself, either judicial or ministerial. He sits, indeed, amongst the records, because he is to register the acts which are there recorded; but he sits there as *an officer of the bishop*, and the office is held under the chapter part of the cathedral, and within its consecrated precincts, where the bishop has a jurisdiction, independent of all those which my friend has stated to you—a jurisdiction given to him by many ancient statutes, not merely for preserving that tranquillity which civil order demands everywhere, but to enforce that reverence and solemnity which religion enjoins within its sanctuaries throughout the whole Christian world.

Much has been said of the registrar's freehold in his office, but the term which he has in it—viz., for life—arose originally from an indulgence to the bishop who conferred it; and it is an indulgence which still remains, notwithstanding the restraining statute of Elizabeth. The bishop's appointment of a registrar is therefore binding upon his successor. But, how binding? Is it binding to exclude the future bishop from his own cathedral? Is it true, as this man preposterously supposes, that, because he chooses to put private papers of his own where no private papers ought to be; because he thinks fit to remove them from his own house and put them into the office appointed only for the records of the public; because he mixes his own particular accounts with the archives of the diocese, that therefore, forsooth, he has a right to oust the bishop from the offices of his own court, and, with pistols, to resist his entrance if he comes even to enjoin quiet and decency in his church? Surely Bedlam is the proper forum to settle the rights of such a claimant.

The bishop's authority, on the contrary, is so universal throughout his diocese, that it is laid down by Lord Coke, and followed by all the ecclesiastical writers down to the present time, that though the freehold in every church is in the parson, yet *that* freehold cannot oust the jurisdiction of the ordinary, who has a right, not merely to be present to visit the conduct of the incumbent, but to see that the church is fit for the service of religion; and so absolute and paramount is his jurisdiction, that no man, except by prescription, can even set up or take down a monument without his

license—the consent of the parson, though the freehold is in him, being held not to be sufficient. The right, therefore, conferred by the bishop on the registrar, and binding (as I admit it to be) upon himself and his successor, is the right to perform the functions of the office, and to receive the legal emoluments. The registrar may also appoint his deputy, but not in the manner my learned friend has affirmed; for the registrar can appoint no deputy without the bishop's consent and approbation. My learned friend has been also totally misinstructed with regard to the late judgment of the Court of King's Bench on the subject. He was not concerned in the motion, and has only his report of it from his client. Mr. Grindley was represented in that motion by a learned counsel, who now assists me in this cause, to whom I desire to appeal. The Court never pronounced a syllable which touched upon the controversy of to-day; on the contrary, its judgment was wholly destructive of Mr. Grindley's title to be deputy, for it held that the infant, and not his *natural* guardian, had with the bishop's approbation the appointment of his deputy; whereas Mr. Grindley was appointed by his *father only*, and not by the infant at all, which my friend well knew, and, therefore, gave parole evidence of his possession of the office, instead of producing his appointment, which would have been fatal to his title: and the reason why the Court refused the mandamus, was because Mr. Roberts, who applied for it, was not a legal deputy. It did not decide that the prosecutor *was* the legal officer, but only that Mr. Roberts *was not*; and it decided that he *was not*, because he had only the appointment of the infant's father, which was, by the bye, the only title, which the prosecutor had himself; and although the infant was a lunatic, and could no longer act in that respect for himself, yet the Court determined that his authority did not devolve to the father, but to the Court of Chancery, which has by law the custody of all lunatics.

This judgment was perfectly correct, and supports my proposition, that the prosecutor was a mere tenant-at-will of the bishop. The infant can indeed appoint his deputy, but not *ex necessitate rei*, as my friend supposes; on the contrary, he will find the reason given by the Court of King's Bench, as far back as the reign of Charles the First, as it is reported by that great magistrate, Mr. Justice Croke. It is there said, that an infant can appoint a deputy, *because the act requires no discretion, the approbation, which is tantamount to the choice, being in the bishop.* The continuance must, therefore, in common sense, be in the bishop also; for otherwise, the infant having no discretion, a proper person might be removed indiscreetly, or an improper person might never be removed at all. I maintain, therefore, on the authority of the ancient law, confirmed by the late decision of the Court of King's Bench, *in this very case*, that the prosecutor,

who is so forward to maintain a privilege, which he could not have maintained even if he had been Judge of the Court and chancellor of the diocese, he had in fact no more title to the office than I have. He tells you, himself, that he never had any appointment from the infant, but from the father only, with the infant's and the bishop's approbation; in other words, he was the deputy *de facto*; but as such I assert he was a mere tenant-at-will; and, consequently became, to all intents and purposes, a private man from the moment the bishop signified his determination to put an end to his office; and that the bishop had signified his determination before the transaction in question, Mr. Grindley has distinctly admitted also. I thought, indeed, I should be more likely to get that truth from him by concealing from him the drift of my examination; and he, therefore, swore most eagerly that the bishop did not offer him the key at the palace; but that, on the contrary, he had told him distinctly that he was no longer in the office. He says besides that the bishop expressed the same determination by a letter; in answer to which he had declared his resolution to hold it till the year expired. I say, therefore, that the prosecutor, at the time in question, was not deputy-registrar, and that, the infant being a lunatic, the bishop had a right to give charge of the office till another was duly appointed. This point of law I will put on the record, if my friend desires it.

But why should I exhaust myself with this collateral matter, since, in *my* view of the subject, it signifies nothing to the question we have to consider. It signifies not a farthing to the principles on which I presently mean to rest my defence, whether he was an usurper, or the legal deputy, or the infant himself, with his patent in his hand.

Let us now, therefore, attend to what this man did, whatever character belonged to him. This is principally to be collected from the prosecutor's own testimony, which is open to several observations. My learned friend, who stated to you in his absence the evidence he expected from him, explained with great distinctness the nature and obligation of an oath; and, speaking from *his own* honest sensations, and anticipating the evidence of his client from the manner *HE* would, as a witness, have delivered his own, he told you that you would hear from him a plain, unvarnished statement; that he would keep back from you no circumstance, nor wish to give a colour to any part of the transaction. What induced my friend to assure us, with so much solicitude, that his witness would adhere so uniformly to the truth, I cannot imagine, unless he thought that his evidence stood in need of some recommendation. All I can say is, that he did not in the least deserve the panegyric which was made upon him, for he did not give an *unvarnished* statement of the very beginning of the transaction which produced all that followed. I asked him whether, in

refusing the key, he did not mean to keep an exclusive possession of the office, and to prevent the bishop even from coming there? But, observe how the gentleman fenced with this plain question. "*I did not,*" he said, "*refuse him the key, but only lest he should take possession.*" I asked him again, "If he did not positively refuse the key?" and desired the answer to be taken down. At that moment my friend, Mr. Manly, very seasonably interposed, as such a witness required to be dry-nursed; and at last he said, "*Oh, the key was included.*"

The bishop, therefore, was actually and wilfully excluded wholly from the office. For, notwithstanding Mr. Grindley's hesitation, Mr. Sharpe, who followed him, and who had not heard his evidence, *from the witnesses being kept apart*, swore DISTINCTLY AND AT ONCE, that the key was taken from Dodd, because Grindley thought he would let the bishop have it; and the witness said further—(*I pledge myself to his words*)—"IT WAS, THEREFORE, DELIVERED INTO MY CUSTODY, AND I REFUSED IT TO THE BISHOP. I DID SO BY MR. GRINDLEY'S DIRECTION, UNDOUBTEDLY."

The very beginning of the transaction, then, is *the total exclusion of the bishop from his own court, by a person appointed only to act as deputy, by his own consent, and during his own will; WHICH WILL he had absolutely determined before the time in question.* I am, therefore, all amazement, when it shoots across my mind that I am exhausting my strength in defending the bishop; because, most undoubtedly, I should have been counsel for *him* as a *prosecutor*, in bringing his opponents to justice. According to this new system, I would have THE JUDGES take care how they conduct themselves. The office-keepers of the records of the Courts at Westminster are held by patent; even the usher's place of the Court of King's Bench is for life; HE too is allowed to appoint his deputy, who is the man that puts wafers into our boxes, and papers into our drawers, and who hands us our letters in the cleft of a stick. But, nevertheless, I would have their lordships take care how they go into the Court of King's Bench, which, it seems, is this man's CASTLE. If Mr. Hewit were to make a noise and disturb the Court, and Lord Kenyon were to order him to be pushed out, I suppose we should have his Lordship at the next assizes for a riot. Suppose any of the judges wished to inspect a record in the Treasury Chamber, and the clerk should not only refuse the key, but maintain his possession with pistols; would any man in his senses argue that it was either indictable or indecent to thrust him out into the street? Yet, where is the difference between the attendants on a court civil and a court ecclesiastical? Where is the difference between the keeper of the Records of the Court of King's Bench, or Common Pleas, and the registrar of the Consistory of Bangor?

To all this I know it may be answered, That these observations

(supposing them to be well founded) only establish the bishop's right of entry into his office, and the illegal act of the prosecutor in taking an exclusive possession; but that they do not vindicate the bishop for having first taken off the lock in his absence, nor for afterwards disturbing him in the possession which he had peaceably regained; that the law was open to him, and that his personal interference was illegal.

To settle this point, we must first have recourse to facts, and then examine how the law applies to them.

It stands admitted, that though Mr. Grindley knew that the bishop had determined his will, and had insisted on his surrender of his situation, which he never held but by the bishop's sufferance, he absolutely refused the key, with the design to exclude him from the office. It was not till *then*, that the bishop, having no other means of access, ordered the lock to be taken off, and a new key to be made. Now, whether this act of the bishop's was legal or illegal, is wholly beside the question—his Lordship is not charged with any force or illegality on *that* account; he is not accused even in the counsel's speech, with any impropriety in this proceeding, except an intrusion into this imaginary castle of Mr. Grindley. It is admitted, in short, that the bishop took a possession *altogether peaceable*.

His Lordship, then, having removed the deputy-registrar, without due authority, if you please, and being (if you will, for anything which interests my argument) in possession, contrary to law, let us see what follows. And in examining this part of the evidence, *upon which, indeed, the whole case depends*, I am not driven to the common address of a counsel for a defendant in a criminal prosecution; I am not obliged to entreat you to suspend your judgments till you hear the other side; I am not anxious to caution you to withhold implicit credit from the evidence till the whole of it is before you. No, gentlemen, I am so far from being in that painful predicament, that though I know above half of what you have heard is not true; although I know that the transaction is distorted, perverted, and exaggerated in every limb and member; yet I desire that you will take it as it is, and find your verdict upon the foundation of its truth. Neither do I desire to seduce your judgments, by reminding you of the delicacy of the case. My friend declares he does not know you personally, but that he supposes you must have a natural sympathy in protecting a person in the bishop's situation against an imputation so extremely inconsistent with the character and dignity of his order. It is natural, as decent men, that you should; and I, therefore, willingly second my learned friend in that part of his address. I solemnly conjure you also to give an impartial judgment; I call upon you to convict or acquit, according to right and justice. God forbid that you should not! I ask no favour for my client because he is a prelate,

but I claim for him the right of an English subject, to vindicate his conduct under the law of the land.

The bishop, then, being in peaceable possession, what is the conduct of the prosecutor, even upon his own confession? He sends for three men; two of whom he calls domestics; one of them is his *domestic blacksmith*. He comes with them, and others, to the office, with PISTOLS, and provided with POWDER AND SHOT. Now, *quo animo* did they come? I was really so diverted with the nice distinction of Mr. Grindley, in his answer to this question, that I could scarcely preserve my gravity. He said, "I came, it is true, with pistols, and with powder and shot, to take possession; but—mark—I did not *load* my pistols in order to *take* possession—I did not load them till *after* I had it, and then only to *keep* the possession I had peaceably taken." This would be an admirable defence at the Old Bailey. A man breaks into my house in the day, to rob me of my plate*—(this is but too apt a quotation, for so I lost the whole of it); but this felon is a prudent man, and says to himself, I will not *load* my firearms till I have got into the house and taken the plate, and then *I will load them*, to defend myself against the owner, if I am discovered. This is Mr. Grindley's law, and, therefore, the moment he had forced the office, he loaded his pistols, and called aloud repeatedly, that he would blow out the brains of the first man that entered. A pistol had before been held to the breast of one of the bishop's servants; and things were in *this* posture when the bishop came to the spot, and was admitted into the office. The lock which he had affixed he found taken off, the doors forced open, and the apartment occupied by armed men, threatening violence to all who should oppose them.

THIS IS MR. GRINDLEY'S OWN ACCOUNT. He admits, that he had loaded his pistol *before the bishop came*; that he had determined to stand, *vi et armis*, to maintain possession by violence, and by death if necessary; and that he had made that open declaration in the hearing of the bishop of the diocese. Perhaps Mr. Grindley may wish, hereafter, that he had not made this declaration so public; for, whatever may be the *bishop's* forbearance, yet the criminal law may yet interpose by other instruments, and by other means. Indeed, I am truly sorry to be discussing this matter for a *defendant in July*, which ought to have been the accusation of a *prosecutor six months ago*, if the public peace of the realm had been duly vindicated.

The bishop, then, being at the door, and hearing his office was taken possession of by force, and by the very man whom he had displaced, the question is, Did he do *more* than the law warranted in that conjuncture? I maintain, that, from overbearance, he did *much less*. If in this scene of disorder the records of the diocese

* It seems Lord Erskine's house, in Serjeants' Inn, had been recently broken open, and his plate all stolen.

had been lost, mutilated, or even displaced, the bishop, if not legally, would at the least have been morally responsible. It was his duty, besides, to command decency within the precincts of his church, and to remove at a distance from it all disturbers of the peace. And what after all did the bishop do? He walked up and down, remonstrating with the rioters, and desiring them to go out, having before sent for a magistrate to act according to his discretion. It is true, Mr. Grindley worked himself up to say, that the bishop held up his fist so (*describing it*); but, with all his zeal, he will not venture to swear he did so with a *declaration*, or even with an *appearance*, of an intention to strike him. The whole that he can screw up his conscience to is, to put the bishop in an attitude, which is contradicted by every one of his own witnesses—who all say, that the bishop seemed much surprised, and walked to and fro, saying, “This is fine work!” and moving his hands backwards and forwards, thus (*describing it*). Does this account at all correspond with Mr. Grindley’s? or does it prove an attitude of force, or even an expression of passion? On the contrary, it appears to me the most natural conduct in the world. They may fancy, perhaps, that they expose the bishop when they impute to him the common feelings, or if you please, the indignation of a MAN, when all order is insulted in his presence, and a shameless outrage committed in the very sanctuary which he is called upon, by the duty of his office, and the dignity of his station, to protect. But is it required of any man, either by human nature, or by human laws (whatever may be the sanctity of his character), to look at such a proceeding unmoved? Would it have been wrong, or indecent, if he had even FORCIBLY removed them? I SAY, IT WAS HIS DUTY TO HAVE DONE SO, WHOEVER WERE THE OFFENDERS—whether the deputy-registrar, the registrar himself, or the highest man in the kingdom.

To come at once to the point. I maintain, that at the time the bishop came to the door, at which very moment Grindley was threatening to shoot the first person that entered, which made somebody say, “Will you shoot the bishop?”—I maintain, at that very moment THREE indictable offences were committing, which put every man upon the level of a magistrate, with regard to authority, and even prescribed a duty to every man to suppress them. In the first, there was AN AFFRAY; which my friend did not define to you, but which I will. Mr. Serjeant Hawkins, transcribing from the ancient authorities, and whose definition is confirmed by every day’s practice, defines an affray thus: “It is an affray, though there is neither actual violence nor threat of violence, where a man arms himself with dangerous weapons in such a manner as will naturally cause terror.” And this was always an offence at common law, and prohibited by many statutes.

Let us measure Mr. Grindley’s conduct, upon his own account of

it, by the standard of this law, and examine whether he was guilty of an affray. He certainly threatened violence; but I will throw him *in* that, as I shall examine his threatening when I present him to you in the character of a rioter. I will suppose, then, that he threatened no violence; yet he was armed with dangerous weapons in such a manner as would naturally create terror. He tells you, with an air of triumph, that he brought the arms for that express purpose, and that he dispersed those who came to disturb him in his CASTLE. He was, therefore, clearly guilty of an affray.

Let us next see what the law is, as it regards all the king's subjects, when an affray is committed. The same authorities say—(I read from Mr. Serjeant Hawkins, who collects the result of them), "That any private man may stop and resist all persons engaged in an affray, and remove them; that if he receive a hurt in thus preserving the peace, he may maintain an action for damages; and that, if he unavoidably hurt any of the parties offending in doing that which the law both allows and commends, he may well justify it, for he is no ways in fault." Setting aside, therefore, the office and authority of the bishop, and the place where it was committed, and considering him only as a private subject, with no power of magistracy, he had a right to do—not that which he did (*for in fact he did nothing*)—he had a right to remove them by main force, and to call others to assist in removing and securing them. The bishop, however, did neither of these things; he took a more regular course—he sent for a magistrate to preserve the peace—he had, indeed, sent for him before he came himself; yet they would have you believe, that he went there for an illegal purpose—as if any man who intended violence, would send for a magistrate to witness the commission of it. When the magistrate came, Mr. Grindley thought fit to behave a little more decently; and so far was the bishop from acting with passion or resentment, that when those about him were desirous of interfering, and offered their services to turn them out, he said to them: "No! let the law take its course in due season." His lordship, by this answer, showed a greater regard for peace than recollection of the law; for the course of the law *did* warrant their forcible removal; instead of which, he left the prosecutor, with arms in his hands, in a possession, taken originally by force, and forcibly maintained.

Let us next examine if the prosecutor and his witnesses were engaged in a RIOT. My learned friend will forgive me if I remind him, that there is one part of the legal definition of a riot which he omitted. I will, therefore, supply the omission from the same authorities. "A riot is, where three persons, or more, assemble together with an intent, mutually, to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually execute the same in a turbulent manner to the terror of the people, whether the act intended

be legal or illegal." But the same authorities add very properly—"It is clearly agreed, that in every riot there must be some such circumstances, either of actual force and violence, or of an apparent tending to strike terror into the people, because a riot must always be laid *in terroram populi*." This most important part of the definition of a riot, which my friend prudently omitted, points, directly and conclusively, upon the conduct of *his own* client, and completely excludes *mine*. The prosecutor, and his witnesses, *did* assemble mutually to support one another, and executed their purpose *with arms in their hands and with threats and terror*; which conclusively constitutes a riot, whether he was registrar or not, and whatever might be his right of possession. The bishop, on the other hand, though he might have no right to remove the prosecutor, nor any right to possession, could not possibly be a rioter, for he came *without violence or terror, or the means of either*, and, if he had employed them, might lawfully have used them against those who were employing both.

Let us now further examine, whether I was right in maintaining that there was an aggravation, from the *place* where the offence was committed, and which invested the bishop with a distinct character and authority.

By the statute of Edward the Sixth, if persons come tumultuously within the consecrated precincts of the church, the ordinary has not only a right to repress them, but he may excommunicate the offenders; who are, besides, liable to a severe and ignominious temporal punishment, after a conviction on indictment, even for an indecent brawling within the precincts of the church, without any act at all, which would amount to a riot or an affray.

Let us, then, for a moment, reflect, how these solemn authorities, and any possible offence in the reverend prelate, can possibly be reconciled; and let us contemplate, also, the condition of England, if it be established as a precedent upon the fact before you, that he is amenable to criminal jurisdiction upon this record. A riot may arise in the street, the moment after your verdict is pronounced, by persons determined to take and to maintain some possession by force. I may see or hear armed men threatening death to all who shall oppose them; yet I should not venture to interpose to restore the peace, because I cannot try their titles, nor examine to which of the contending parties the matter in controversy may belong. If this new doctrine is to be established, ask yourselves this question, Who will in future interfere to maintain that tranquillity, which the magistrate may come too late to preserve, if the rein is given to disorder in the beginning? Although dangerous violence may be committing, though public order may be trampled down within his view, a wise man will keep hereafter within the walls of his own house. Though fearless of danger to his *person*, he may yet justly fear for his *reputation*, since, if he only asks what is the matter,

and interposes his authority or counsel, he may be put by the rioters into an attitude of defiance, and may be subjected to the expense and degradation of a prosecution! The delicate situation of the bishop, at this moment criminally accused before you, is admitted; but it is hardly more, gentlemen, than would attach upon persons of many other descriptions. The same situation would not be much less distressing to a judge, to a member of Parliament, or to any of you, gentlemen, whom I am addressing. What would be the condition of the public, or your own, if you might be thus dragged to the assizes as rioters, by the very rioters which your duty had driven you to offend? I assert, that society could not exist for an hour, if its laws were thus calculated to encourage its destroyers, and to punish its protectors.

Gentlemen, there is no man loves freedom better than I do; there is no man, I hope, who would more strenuously oppose himself to proud and insolent domination in men of authority, whether proceeding from ministers of the Church, or magistrates of the State. There is no man, who would feel less disposed to step beyond my absolutely imposed duty as an advocate, to support oppression, or to argue away the privileges of an Englishman. I admit, that an Englishman's house is his castle; and I recollect and recognise all the liberties he ought to enjoy. My friend and I are not likely to differ as to what an Englishman's freedom consists in. The freedom that **HE** and I love and contend for, is **THE SAME**. It is a freedom that grows out of, and stands firm upon **THE LAW**—it is a freedom which rests upon the ancient institutions of our wise forefathers—it is a freedom which is not only consistent with, but which cannot exist without public order and peace—and above all, it is a freedom, cemented by morals, and still more exalted by a reverence for religion, which is the parent of that charity, humanity, and mild character, which has formed, for ages, the glory of this country.

Gentlemen, my learned friend takes notice, that this cause has been removed from its primitive tribunal, in order to be tried before you at Shrewsbury. He tells you, he never saw the affidavit that was the foundation of its removal: which, however, he with great propriety supposes contained matter which made it appear to Lord Kenyon to be his duty to withdraw the trial from its proper forum in Wales. But, he is instructed by Mr. Grindley to deny that anything was done, either by himself, or any other person connected with him, to prejudice that tribunal, or the country which was to supply it. I, on the other hand, assert that, upon the prosecutor's *own evidence*, greater injustice and malice never marked any judicial proceeding. I have in my hand a book (no matter by whom written), circulated industriously through all Wales, to prejudice the public mind upon the very question before you. But Mr. Grindley, it seems, is not responsible for the acts of

this anonymous libeller. How far he is responsible, it is for you to judge. It is for you to settle, how it happened that the author of this book should have it in his power, minutely to narrate every circumstance which Mr. Grindley has himself been swearing to ; and that he should happen, besides, to paint them in the very *same* colours, and to swell them with the *same* exaggerations, with which they have been this morning accompanied. It will be for *you* to calculate the *chances* that should bring into the same book, under inverted commas, a long correspondence between the Bishop of Bangor and this very person. Gentlemen, he admits, upon his oath, "that he furnished the materials from whence that part of the work, at least, might have reached the author ;" and from thence it will be for you to guess what share he had in the remainder. All I know is, that from that time forward the bishop's character has been torn to pieces, not from this pamphlet alone, but by a pestilential blast of libels, following one another ; so that it has been impossible to read a newspaper, without having announced to us this miserable cause, and the inquiries forsooth to be instituted in Parliament, which were to follow the decision. Gentlemen, the same spirit pursues the cause even into *THIS PLACE*,—proceeding from the same tainted source. My friend tempers his discourse with that decorum and respect for religion, which is inseparable from the lips of so good a man. He tells you, that it has been wittily said of the clergy, and his client desires him to add, "truly too"—that the clergy have found what Archimedes wished for in vain—"a fulcrum, from whence to move the world ;" he tells you, "that it is recorded of that great philosopher, that he desired but to have a fulcrum for his engine, to enable him to accomplish it." "Churchmen," says Mr. Grindley, by the mouth of Mr. Adam, who cannot abandon him, and who, as a sort of set-off against *his own* honour and moderation, is obliged to inhale the spirit of his client, "The Church," says Mr. Grindley, "has found this fulcrum in the other world, and it is by playing off *that* world, they enthrall the world we live in." He admits, indeed, that when they employ their authority to enforce the true purposes of religion, they have a right to that awful fulcrum upon which their engine is placed, and then their office will inspire reverence and submission ; but when they make use of it for the lowest and most violent purposes, for ends destructive alike to religion and civil society (*of course the purposes in question*), THEN it seems it is, that disgrace not only falls upon its individuals, but destruction overtakes the order.

My learned friend, by his client's instruction, then immediately applies this general reflection, and says, "that he can discover no other reason why the bishop would no longer permit Mr. Grindley to hold the office than that he had deviated from his celestial course—had looked to the vile and sordid affairs of the world, and prostituted the sacred dignity of his character to purposes which

would degrade men in the lowest situations." My friend said, across the court, that he had never seen the pamphlet. Good God ! I believe it. But *I* have seen it ; and I have no doubt that one-half of it is copied into his brief : it is written in this very spirit—it brings before the bishop the events of France—it warns him of the fate of his brethren in that country, as an awful lesson to ecclesiastics of all ranks and denominations, and *reminds* him that 18 archbishops, 118 bishops, 11,850 canons, 3000 superiors of convents, and a revenue of £15,000,000 sterling, were on a sudden swept away. [*Mr. Erskine here read an extract from the pamphlet, and then continued :*]

Gentlemen, all this is mighty well ; but he must be but little acquainted with the calamities of France who believes that this was the source of them. It was from *no such causes* that those horrors and calamities arose, which have disfigured and dishonoured her revolution, and which have clouded and obscured the otherwise majestic course of freedom ;—horrors and calamities which have inspired an alarm into many good men, and furnished a pretext for many wicked ones in our own country. It was the profligacy and corruption of the French STATE, and not the immorality of her CLERGY, which produced that sudden and extraordinary crisis, in the vortex of which the Church, and almost religion itself, were swallowed up. The clergy of France was pulled down *in the very manner of this pamphlet*. A trumpet was blown against their order—the Massacre of St. Bartholomew was acted upon the stage, and the Cardinal of Lorraine introduced upon it, exciting to murder, in the robes of his sacred order. It was asked by a most eloquent writer* (with whom I do not agree in many things as I do in this), whether this horrid spectacle was introduced to inspire the French people with a just horror of blood and persecution ?—and he answers the question himself, by saying that it was to excite the indignation of the French nation against RELIGION AND ITS OFFICES ; and that it had its effect : "That by such means the Archbishop of Paris, a man only known to his flock by his prayers and benedictions, and the extent of whose vast revenues could be best ascertained by his unexampled charity to the unhappy, was to be hunted down like a wild beast, merely because the Cardinal of Lorraine, in the sixteenth century, had been a rebel and a murderer."

In the same manner, this pamphlet, through the medium of abuse upon the *Bishop of Bangor*, is obviously calculated to abuse the minds of the lower orders of the people against the CHURCH ; and to destroy the best consolation of human life, by bringing the sanctions of religion into doubt and disrepute. I am, myself, no member of the Church of England, nor do I know that my friend is—we were both born in another part of the island, and educated in other forms of worship : but we respect the offices of religion, in

* Mr. Burke.

whatever hands they are placed by the laws of our country ; and certainly the English clergy never stood higher than they do to-day, when Mr. Adam, so thoroughly acquainted with the history of his country, as far as it is ancient, and who, from his personal and professional connections, is so perfectly acquainted with all that passes in the world of our own day, is drawn back to the times of Laud and Wolsey, to search for English prelates, who have been a reproach to the order ; and when he would represent tyranny and oppression in churchmen, is forced back upon an unreformed Church, and to ages of darkness and superstition, because it would have been in vain to look for them under the shadow of that mild religion which has promoted such a spirit of humanity, and stamped such a character upon our country, that if it should ever please God to permit her to be agitated like neighbouring nations, the happy difference would be seen between men who reverence religion, and those who set out with destroying it. The BISHOPS besides (to do them common justice), are certainly the *last* of the clergy that should be attacked. The indulgent spirit of reformed Christianity, recollecting that, though invested with a divine office, they are men with human passions and affections, permits them to mix in all the customary indulgences, which, without corrupting our morals, constitute much of the comfort and happiness of our lives ; yet, they in a manner separate themselves from their own families ; and whilst the other orders of the clergy, even the most dignified, enjoy (without being condemned for it) the amusements which taste and refinement spread before us, no bishop is found within these haunts of dissipation. So far from subjecting themselves to be brought to the assizes for riot and disorder, they thus *refuse many of the harmless gratifications*, which, perhaps, rather give a grace and ornament to virtue, than disfigure the character of a Christian ; and I am sure, the reverend prelate, whom I represent, has never overstepped those limits, which a decorum, perhaps overstrained, has by custom imposed upon the whole order. The bishop's individual character, like every other man's, must be gathered from his life, which, I have always understood, has been eminently useful and virtuous. I know he is connected with those whose lives are both ; and who must be suffering distress at this moment from these proceedings. He is nearly allied to one,* whose extraordinary knowledge enables him to fulfil the duties of a warm benevolence, in restoring health to the sick, and in bringing back hope and consolation along with it, to families in the bitterness of affliction and distress. I have more than once received that blessing at his hands, which has added not a little to the anxiety which I now feel.

Gentlemen, I am instructed, and indeed pressed by the anxiety of the bishop's friends, to call many witnesses, to show, that he was by no means disturbed with passion, as has been represented, and

* The celebrated Dr. Richard Warren.

that, so far from it, he even repressed those, whose zeal for order and whose affection for his person, prompted them to interfere, saying to them, "The law will interpose in due season." I have witnesses, to a great number, whom I am pressed to call before you, who would contradict Mr. Grindley in the most material parts of his testimony; but then I feel the advantage he would derive from this unnecessary course; he would have an opportunity, from it, to deprive the reverend prelate of the testimony and protection of your approbation. He would say, no doubt, "Oh, I made out the case which vindicated my prosecution, though it was afterwards overturned by the testimony of persons in the bishop's suite, and implicitly devoted to his service; I laid facts before the jury, from which a conviction must have followed, and I am not responsible for the false glosses by which *his witnesses have perverted them.*" This would be the language of the prosecutor; and I am, therefore, extremely anxious that your verdict should proceed *upon the facts as they now stand before the Court*, and that you should repel, with indignation, a charge which is defeated by the very evidence that has been given to support it. I cannot, besides, endure the humiliation of fighting with a shadow, and the imprudence of giving importance to what I hold to be *nothing*, by putting *anything* in the scale against it; a conduct which would amount to a confession that *something* had been proved which demanded an answer. How far those from whom my instructions come may think me warranted in pursuing this course, I do not know; but the decision of that question will not rest with either of us, if your good sense and consciences should, as I am persuaded they will, give an immediate and seasonable sanction to this conclusion of the trial.

In about five minutes the jury acquitted all the defendants.

*SPEECH for Mr. CUTHELL on an indictment for publishing
a libel.*

THE SUBJECT.

THE following speech of Lord Erskine was delivered in the Court of King's Bench, at Westminster, on the 21st of February 1799. The case of Mr. Cuthell was shortly this : The Bishop of Landaff, in the year 1798, had published a pamphlet inculcating the duty of the people of this country to exert themselves to the utmost in the critical exigency of its affairs, in consequence of the French Revolution and the danger of an invasion from France, and inculcating the propriety of submitting to a regular system of high taxation within the year for supplying every necessity of the State. To this pamphlet the Rev. Mr. Gilbert Wakefield, well known and remembered as an eminent scholar, published a reply, on the appearance of which in the shops of London, the late Mr. Johnson, of St. Paul's Churchyard, and another bookseller who had sold it, were prosecuted by the Attorney-General, and convicted ; Lord Kenyon and the two special juries who tried the causes at Guildhall having considered Mr. Wakefield's pamphlet to be a seditious libel, and the booksellers responsible as publishers.

After these convictions, the Attorney-General indicted Mr. Wakefield himself as the author, and Mr. Cuthell, the bookseller of Holborn, who had sold it in his shop. Mr. Cuthell's case was a very particular one. He was not a publisher of books or pamphlets on political or other transitory subjects, but dealt almost entirely in books of classical learning ; and as such a bookseller had been selected by Mr. Wakefield to publish many of his learned works, *but never any other*—nor had, indeed, Mr. Wakefield written any other ; nor did it appear that Mr. Cuthell had any reason to suspect that Mr. Wakefield had become a writer upon any political topics, as the Bishop of Landaff, to whom he was publishing a reply, had written largely upon theological subjects.

The reply to the Bishop of Landaff was not printed by Mr. Cuthell, but by a Mr. Hamilton, a printer employed by Mr. Wakefield himself, who directed some copies to be sent for sale to Mr. Cuthell's shop, as he had always been the publisher and seller of his many classical works. Mr. Cuthell began to sell them without due examination, but instantly stopped the sale upon the first intimation of the nature and character of the work.

The indictment against Mr. Wakefield, the author, and against Mr. Cuthell, the bookseller, were appointed on the same day, the 21st of February 1799, for trial ; and Mr. Cuthell being to be tried *first*, and Mr. Wakefield being to make *his own defence* as the author, Lord Erskine

appears to have taken his stand for Mr. Cuthell upon his *particular situation*, contending that, having always been the publisher of Mr. Wakefield's works upon subjects of ancient learning only, and that this pamphlet being brought to him by Mr. Wakefield himself, without any notice of so great a change of subject, he had suffered it to be sold *upon the faith of Mr. Wakefield's character, and the abstract nature of all his other works, without suspecting that the subject was political, much less seditious*; the shopman, who was called as a witness, having sworn that it would not otherwise, under his general instructions and the nature of Mr. Cuthell's business, have found any entrance into the shop. To confirm this defence, Mr. Wakefield, the author, was called by Mr. Cuthell, but declined answering, as it might criminate himself. How the exculpation of Mr. Cuthell could have criminated Mr. Wakefield, beyond the writing of the book, of which the Crown was known to have had full proof, and which was not afterwards denied by Mr. Wakefield in his own defence, it is not easy to understand; but Mr. Wakefield had a most unquestionable right to refuse the aid of his testimony to Mr. Cuthell, whose case, however, suffered considerably from the want of it.

THE SPEECH.

I RISE to address you, gentlemen of the jury, with as much anxiety as I have ever felt in the course of my professional life. The duty I have to perform is difficult and delicate. I am counsel for Mr. Cuthell *only*, who is charged merely as publisher of a writing, for which the reverend gentleman now in court (*and who is to plead his own cause*) is immediately afterwards to be tried, on another indictment, as the *author*. The rules of law would entitle Mr. Cuthell to a *double* defence; he might maintain the innocence of the *book*, because *his* crime as *publisher* can have no existence unless the matter be criminal which he has published; and supposing it to be criminal, he might separate himself by evidence from the criminal purpose charged upon him by the record. The first of these offices he must not be supposed to shrink from because of its difficulty, or from the force of the verdicts which the Attorney-General has adverted to as having been given in the city of London; Mr. Johnson, who was *there* convicted, stood in the ordinary situation of a bookseller selling a book in the course of his trade. On that occasion I thought myself bound to make the defence of *the book*; but the defence of a *book* may be one thing, and that of its publisher another. There can be no proceedings *IN REM* by an attorney-general against a *book* as against tea or brandy in the Exchequer. The *intention of the author and of each publisher* involves another consideration, and it is impossible to pronounce what opinion the jury of London might have held concerning the book, if its author had been to lay before them his own motives, and the circumstances under which it was written. Even after Mr.

Cuthell shall be convicted from my failing in his defence (a supposition I only put, as the wisest tribunals are fallible in their judgments), the verdict ought not, in the remotest degree, to affect the reverend gentleman who is afterwards to defend himself. *His* motives and intentions will be an entirely new cause, to be judged of as if no trial had ever been had upon the subject; and so far from being prejudged by other decisions, I think that, for many reasons, he will be entitled to the most impartial and the most indulgent attention. These considerations have determined me upon the course I shall pursue. As *Mr. Cuthell's* exculpation is by disconnecting himself wholly from the work as a CRIMINAL publisher, from his total ignorance of its contents, and, indeed, almost of its existence, I shall leave the province of its defence to Mr. Wakefield himself, who can best explain to his own jury the genuine sentiments which produced it, and whose very deportment and manner in pleading his own cause may strikingly enforce upon their consciences and understanding the truth and integrity of his defence. Observations from *me* might only coldly anticipate, and, perhaps, clash with the arguments which the author has a just, natural, and a most interesting right to insist upon for himself.

There is another consideration which further induces me to pursue this course. The cause, so conducted, will involve a most important question, as it regards the liberty of the press; because, though the principles of criminal and civil justice are distinguished by as clear a boundary as that which separates the hemispheres of light and darkness, and though they are carried into daily practice throughout the whole circle of the law, yet they have been too long confounded and blended together when a *libel* is the crime to be judged. This confusion, gentlemen, has not proceeded from any difficulty which has involved the subject, because of all the parts of our complicated system of law it is the simplest and clearest; but because POLITICAL JUDGES, FOLLOWING ONE ANOTHER IN CLOSE ORDER, and endeavouring to abridge the rights and privileges of juries, have perverted and distorted the clearest maxims of universal jurisprudence, and the most uniform precedents of English law. Nothing can establish this so decisively as the concurrence with which all judges have agreed in the principles of *civil* actions for libels or slander, concerning which there never has been a controversy, nor is there to be found throughout the numerous reports of our courts of justice a discordant case on the subject; but in *indictments* for *libels*, or, more properly, in indictments for *political* libels, the confusion began and ended.

In the case of a *civil* action, throughout the whole range of civil injuries the master is always *civiliter* answerable for the act of his servant or agent; and accident or neglect can therefore be no answer to a plaintiff complaining of a consequential wrong. If the driver of a public carriage maliciously overturns another upon the:

road, whilst the proprietor is asleep in his bed at a hundred miles' distance, the party injuring must unquestionably pay the damages to a farthing; but though such malicious servant might also be indicted, and suffer an infamous judgment, *could the master also become the object of such a prosecution?* CERTAINLY NOT. In the same manner, partners in trade are *civilly* answerable for bills drawn by one another, or by their agents, drawing them by procuration, though fraudulently, and in abuse of their trusts; but if one partner commits a fraud by forgery or fictitious indorsements, so as to subject *himself* to death, or other punishment by indictment, could *the other partners* be indicted? To answer such a question here would be folly; because it not only answers itself in the *negative*, but exposes to scorn every argument which would confound indictments with civil actions. WHY, then, is *printing and publishing* to be an exception to *every other human act?* WHY is a man to be answerable *criminaliter* for the *crime of his servant* in *this instance* more than in *all other cases?* Why is a man who happens to have published a libel under circumstances of mere accident, or, if you will, from actual carelessness or negligence, but *without criminal purpose*, to be subjected to an *infamous punishment*, and harangued from a British bench as if he were the malignant author of that which it was confessed before the Court delivering the sentence *that he never had seen or heard of?* As far, indeed, as damages go, the principle is intelligible and universal; but as it establishes *a crime*, and inflicts a punishment which affects character and imposes disgrace, it is shocking to humanity and insulting to common sense. The Court of King's Bench, since I have been at the bar (very long, I admit, before the noble lord presided in it, but under the administration of a truly great Judge), pronounced the infamous judgment of the pillory on a most respectable proprietor of a newspaper for a libel on the Russian Ambassador, copied, too, out of another paper, but which *I myself* showed to the Court by the affidavit of his physician appeared in the *first* as well as in the *second* paper, *whilst the defendant was on his sick-bed in the country, delirious in a fever.* I believe that affidavit is still on the files of the Court. I have thought of it often—I have dreamed of it, and started from my sleep—sunk back to sleep, and started from it again. The painful recollection of it I shall die with. How is this vindicated? From the *supposed* necessity of the case. An indictment for a LIBEL is, *therefore*, considered to be an anomaly in the law. *It was held so undoubtedly;* but the exposition of that *error* lies before me; the Libel Act lies before me, which *expressly* and *in terms* directs that the trial of a libel shall be conducted *like every other trial for any other crime*; and that the jury shall decide *not* upon the mere fact of *printing or publishing*, but *upon the whole matter put in issue*—i.e., *the publication of the libel* WITH THE INTENTIONS CHARGED BY

THE INDICTMENT. This is the rule by the Libel Act; and *you*, the jury, as well as the Court, are bound by it. What, then, does the present indictment charge? Does it charge merely that Mr. Cuthell *published*, or *negligently published*, the "Reply to the Bishop of Landaff"? No. It charges: "*that the defendant, being a wicked and seditious person, and malignantly and traitorously intending to secure the invasion of Great Britain by the French, and to induce the people not to defend the country, had published, &c., SETTING FORTH THE BOOK.*" This is the charge, and *you* must believe *the whole complex proposition* before the defendant can be legally convicted. No man can stand up to deny this in the teeth of the Libel Act, which reduces the question wholly to the intention, which ought to be a foundation for their verdict. Is your belief of negligence sufficient to condemn Mr. Cuthell upon this indictment, though you may discredit the criminal motive which is averred? The best way of trying that question is to find the negligence by a special verdict, and *negative* the motives *as alleged by the indictment*. Do that, and I am satisfied.

I am not contending that it may not be wise that the law should punish printers and publishers even by way of indictment for *gross negligence* (*crassa negligentia*), because of the great danger of adopting a contrary rule. Let it, for argument's sake, be taken that such an indictment may, even as the law stands, be properly maintained; but if this be so, why should not the indictment, in conformity with the universal rules of pleading, charge such negligence by a distinct count? Upon what principle is a man who is guilty of *one* crime to be convicted without a shadow of evidence, or in the teeth of all evidence, of *another* crime, greatly more heinous, and totally *different*?

If upon a count charging a *negligent* publication a publisher were convicted, he could only appear upon the record to be guilty *from negligence*; but according to the present practice the Judge tells the jury that though a defendant has only been *negligent*, he is guilty upon the whole record, which charges a treasonable, seditious, or malignant intention; and after such a conviction, when he appears in court to receive judgment, and reminds the judge who inveighs against his traitorous, seditious, or malignant conduct that the evidence established his *negligence ONLY*, he is instantly silenced, and told that he is estopped by the record, which charges a publication with these mischievous intentions, and of which entire charge the jury have found him guilty. I appeal, boldly, to the truly excellent and learned Chief-Justice whether this be conformable to the precision of the English law in any of its other branches, or to the *justice* of any law throughout the world.

But it has been said, and truly, How is the intention to be proved but by the act? I of course admit that the intentions of men are inferences of reason from their actions, *where the action can flow*

but from ONE motive, and be the reasonable result but of ONE INTENTION. Proof of *such* an action is undoubtedly most convincing proof of the only intention which could produce it, but there are few such actions, nor, indeed, scarcely any human conduct which may not by circumstances be qualified from its original *prima facie* character or appearance. This qualification is the foundation of all defence against imputed crimes. A mortal wound or blow, without adequate provocation visible to a grand jury, is a just foundation for an indictment of murder; but the accused may repel that inference, and reduce the crime from murder to manslaughter, or to excusable, and even to justifiable homicide. Mr. Cuthell asks no more. He admits that on the evidence *now* before you he ought to be convicted if the book is in your judgment a libel, because he stands before you as a publisher, and may be therefore taken to have been secretly connected with the author, or even to be the author himself; but he claims the right of repelling those presumptions *by proof*, and the only difference between the Crown and me will be, not as to the existence of the facts on which I rest my defence, *but whether the proof may be received as relevant, and be acted upon if believed by you the jury.* I am sorry to say, gentlemen, that it is now become a commonplace position that printers and booksellers are answerable for simple negligence; yet no Judge in my hearing has ever stated that *naked proposition* from the bench. It has been imputed as the doctrine of the noble and learned Judge, *when and where* he delivered it I am ignorant; he has, on the contrary, tried indictments on the principles of the Libel Bill, before the Libel Bill existed, and on these principles Stockdale was tried before him and acquitted. Where a printer, indeed, has printed, or a bookseller has sold a book, written by an unknown or unproduced author, and cannot bring any evidence in his defence, he must, to be sure, in common sense and upon every principle of law, be criminally responsible if the thing published be a libel, *but not for negligence only*, but as criminal in the full extent of the indictment. A publisher, indeed, though separated in *original* intention from the criminal motives of the author, may be found to be responsible in law for the publication, upon the legal presumption that he had *adopted the criminal sentiments of the author, and criminally circulated them by printing or publication.* But such a conviction does by no means establish the proposition that *innocent* printers or publishers, *where they can show their innocence*, are criminally responsible *for negligence only.* On the contrary, it proceeds upon the criminality being *prima facie* established by the act of publishing in cases where the printer or publisher cannot show the negligence or accident which had led to the publication; *but where such mere negligence or accident can be established to the satisfaction of a jury, which not very often can be the case*, the criminal inference is then repelled, and the

defendant ought to be entitled to an acquittal. The numerous convictions, therefore, of publishers, *upon the mere act of publication*, establish no such proposition as that which the Attorney-General has contended for; because such publishers were convicted of the criminal intentions charged in the indictment, *not* upon the principle of criminal responsibility for an act of *neglect* only, but because it could not be established *in these cases* that the act of publishing arose from *negligence only*. By the act of publishing matter from whence a criminal intention results, as an inference of reason, and therefore as an inference of law, the criminal mind is *prima facie* fairly imputable, and in the absence therefore of satisfactory evidence on the part of the defendant to repel the criminal conclusion, the guilt is only established. But, then, this is not doctrine applicable singly to libels—it applies equally to *all crimes* where the most innocent man may be convicted, if from unfortunate circumstances he cannot repel the presumptions arising from criminating proof. But the doctrine which I shall ever oppose as destructive of every human security, and repugnant to the first elements of criminal justice, is this, *that though the defendant, taking upon himself the difficult, and frequently impossible proof of accident or oversight, should be able to convince the jury that he never saw the matter charged to be a libel—that it was imposed upon him as a work of a different quality—or that he was absent when a servant sold it, and to which servant he had not given a general license to sell everything which was brought to him—and who, moreover, could fortify the proof of his innocence by his general deportment and character; yet, that such a publisher must nevertheless be found guilty as a malignant publisher, by virtue of an abstract legal proposition—this I deny, and have throughout my whole professional life uniformly denied. It never has been adjudged in such a shape as to be fairly grappled with. I positively deny such a doctrine, and I am sure that no Judge ever risked his character with the public by delivering it as law from the bench. The judges may have been bound at *nisi prius*, as I admit they are, to decide according to the current of decisions. I will meet my learned friend the Attorney-General in the Lords' House of Parliament on that question, *if you the jury will assist me with the fact to raise it by finding as a special verdict—"That the book if you please was a libel—that Mr. Cuthell, the defendant, published it, but that he published it from negligence and inadvertency, WITHOUT THE MOTIVES CHARGED BY THE INDICTMENT."* If you, gentlemen of the jury, will find such a verdict, *I will consent never to re-enter Westminster Hall again if one Judge out of the twelve will, upon a writ of error, pronounce judgment for the Crown.* The thing is IMPOSSIBLE, and the Libel Act was made for no other purpose than to suppress doctrines which had long been branded as pernicious and destructive to public freedom and*

security. The Libel Bill was passed to prevent trials of libels from being treated as *an anomaly in the law*, and to put them on a footing with all other crimes; and no crime can possibly exist *when the intention which constitutes its essence can be separated from the act*—“*Actus non facit reum, nisi mens sit rea.*” If a man, *without knowing the King*, were to give him a blow which might even endanger his life, could he be convicted of compassing and imagining the *death of the King* under the statute of Edward III.? *Undoubtedly not*—because the *compassing* or *intention* was the *crime*, and the blow was only the overt act from whence the compassing was to be a legal inference, unless the prisoner repelled it by showing the circumstances of the *accident* and *ignorance* under which he assaulted the King. I of course admit that it is not necessary to prove that a publisher had seen the book he published; for if he authorises his servants to publish *everything without examination*, it would be sufficient proof in the judgment of a jury, according to circumstances, that he was the wilful and criminal publisher or author himself, or secretly connected with the author, and criminally implicated in his guilt. But the present question is, whether, *if he can convince you, the jury, of his innocence, you are still bound to convict him under an imperative rule of law, though you believed his mind to have been unconscious of the crime imputed by the indictment.*

If a man were to go upon the roof of a house in the Strand or Fleet Street, and throw down large stones upon the passengers below, it would undoubtedly be murder, though a stranger only were killed, against whom no particular malice could possibly be suspected—*i.e.*, it would be murder if these facts were returned to the judges by special verdict. But would a jury be bound to convict him, even though they were convinced *by the clearest evidence* that he had mistaken the side of the house, and from inadvertence, had thrown the stones *into the street instead of on the other side, which led to an unfrequented spot*? This proof might be *difficult*: but if *the proof existed*, and the jury *believed it*, *WOULD IT BE MURDER*? Common law, common sense, and common humanity, revolt alike at the idea.

The Attorney-General has admitted the true principle of the liberty of the press, as it regards the quality of a publication. He has admitted it, greatly to his honour, because he is the first Attorney-General who ever, to my knowledge, has so *distinctly* admitted it. He has, indeed, admitted the true principle in the very way I have always understood it in most of the criminal prosecutions which, in my time, have been the subject of trial. The questions have always arisen on the application of the *principle* to *particular cases*, and that is the sole question to-day. He has admitted that every subject has a clear right freely to discuss the principles and forms of the Government, to argue upon their

imperfections, and to propose remedies ; to arraign, with decency and fair argument, the responsible ministers and magistrates of the country, though not to hold them up to general, indiscriminating execration and contempt ; and he has admitted also, that it is the office of the jury to say within which of the two descriptions any political writing was to be classed. This admission comes strongly in support of *publishers*. For if an author could not write legally upon any such subjects, publishers ought then to reject the book altogether upon the very view of the subject, as collected from the title-page, without adverting to the contents. But if writings respecting our Government, and its due administration, be unquestionably legal, a general bookseller has no such reserve imposed upon him from the *general subject of the work*, and must read his whole library in a perpetual state of imprisonment *in his shop* to guard him from perpetual imprisonment *in a gaol*. If he published, for instance, the Encyclopædia of Paris or London—and in the examination of all science and of all art in such a stupendous work, there should be found, even in a single page or paragraph, a gross attack on religion, on morals, or on Government, he must be presumed to be malignantly guilty, and (according to the argument) *not primâ facie merely*, but *conclusively*, to be the criminal promulgator of mischief, with mischievous intentions. Surely this can never be even stated in a court of justice. To talk of arguing it is ridiculous. Such a person might, indeed, be *primâ facie* liable ; and I admit that he is so ; but, surely, a Court and jury are invested with the jurisdiction of considering all the circumstances, and have the right of judging according to the just and rational inferences arising from the whole case, whether he was intentionally mischievous. This is all I contend for Mr. Cuthell ; and it is a principle I never will abandon—it is a principle which does not require the support of the Libel Act, because it never has at any time been denied. When Lord Mansfield directed the jury to convict Mr. Almon, as the criminal publisher of Junius, he told them that if Junius was a libel, the guilt of publishing was an inference of law from the act of publication, *if a defendant called no witnesses to repel it, and that no witnesses had been examined by Mr. Almon*. But he admitted, *in express and positive words*, as reported by Sir James Burrow, in the fifth vol. of his Reports, “That the publication of a libel might, by circumstances, be justified as legal, or excused as innocent, by circumstances to be established by the defendant’s proof.” But according to the arguments of to-day no such defence is admissible. I admit, indeed, that it is rarely within the power of a printer or publisher to make out such a case by adequate evidence ; insomuch, that I have never yet been able to bring before a jury such a case as I have for Mr. Cuthell. But the rareness of the application renders it more unjust to distort the principle by the rejection of it, when it justly applies.

Having now laid down the only principle upon which Mr. Cuthell can be defended, *if the passages in the book, selected by the indictment, are libellous*, I will now bring before you Mr. Cuthell's situation, the course of his trade and business, and his connection, if it can be called one, with the work in question.

Mr. Cuthell, gentlemen, is not at all in the situation of many equally respectable booksellers; the course of whose trade, at the other quarters of the town, in the transitory publications of the day on all subjects, exposes them to the hourly risk of prosecutions on the most solid principles of law, without almost the possibility of such a defence as Mr. Cuthell has to lay before you. They who wish to mix in the slander, the fashion, and the politics of the day, resort for newspapers and pamphlets, to those gay repositories, filled with the active, bustling, and ambitious men of the world. In those places nothing is read or talked of but what is happening at the very moment—a day generally consigning to oblivion domestic events, however singular or afflicting; even the revolutions of empires giving place in a week to a newer topic—even to the favoured pantomime of the day. The bookseller who stands behind such a counter, collecting and exposing to view whatever may be thrown upon it, without perusal or examination—who can have no other possible reason for supposing that he sells no libels, except the absurd supposition that no libels are written—such a man is undoubtedly *primâ facie* criminally responsible; a responsibility *very rarely to be successfully repelled*. Sale of a libel by the master of such a shop, however pure in his morals, *without the most demonstrative evidence on his part to repel the presumption arising from the act*, is unquestionably evidence of publishing the book in the criminal acceptance of publication, because, *in the absence of such evidence*, he is justly taken to be the author himself, or acting in concert with him in giving currency and circulation to his work. I pray you, gentlemen, to recollect that neither *now*, nor at *any former period*, have I ever disputed a proposition built upon reason and matured by decisions into law. But Mr. Cuthell's shop is of a directly opposite description, and gives support to the evidence, by which I mean to repel the criminal presumption arising, *primâ facie*, from the act of publication.

He resides in a gloomy avenue of Holborn. No coloured lamps or transparent shop-glasses dazzle the eye of vagrant curiosity, as in the places I have alluded to. As in the shops of fashion nothing scarcely is sold which the sun has gone down upon, so in *his house* nothing almost is to be seen that is not sacred to learning and consecrated by time. There is not a greater difference between Lapland and Paris, than between the shops I have adverted to and that of Mr. Cuthell. There you find the hunter after old editions—the scholar, who is engaged in some controversy, *not* concerning modern nations, but people and tongues which have for centuries

passed away, and which continue to live only in the memory of the antiquary. Whilst crowds in the circles of gaiety or commerce are engaged at other libraries in the bitterness of political controversy, the pale student sits soberly discussing at Mr. Cuthell's the points of the Hebrews or the accents of the Greeks. Mr. Cuthell, gentlemen, takes no personal merit from this distinction from other booksellers. It is not from superior taste or virtue, or from prudent caution, that he pursues this course, but because he finds his profit in adhering to a particular and well-known branch of bookselling, as every man will always find the surest profit in sticking to his own line of business. We lawyers find our profit, for the very same reason, in practising in one court instead of scouring Westminster Hall; because men are supposed, by their steadiness to one object, to know what they are about.

When I shall have made out this situation of Mr. Cuthell, and have shown his only connection with the work in question from his literary connection with its learned author, I shall have made out a case which will clearly amount to a legal defence as an innocent publisher.

I proceed to this defence with the greater satisfaction, as it is not only without possible injury to the defendant, but in every possible event must contribute to his safety. If I succeed, I am at no man's mercy; if I fail, even the very unsuccessful approach to a legal justification will present a case for mitigation, which the candour and justice of my learned friend will undoubtedly respect.

Mr. Cuthell had been applied to by Mr. Wakefield near a year before this little sudden performance had an existence, to sell *all his works*, which had been sold before by a most respectable bookseller who had just retired from trade. It is but justice at once to Mr. Wakefield and to Mr. Cuthell, to say that the works of the former, which were numerous, were exemplary for their piety and learning, and that the character of the author fully corresponded with the inferences to be collected from his publications. He was a most retired and domesticated scholar, marked and distinguished by a warm and glowing zeal for the Christian religion; and what removed him from every possible suspicion in the mind of Mr. Cuthell, or of any man living, as being engaged in schemes for the introduction of anarchy and irreligion, his most recent publications, which had been committed to Mr. Cuthell for sale, were his answers to Mr. Paine's attack upon the doctrines of Christianity, which Mr. Wakefield had not merely refuted by argument, *but stigmatised in terms of the justest indignation*. This scorn and resentment at the works I have alluded to was surely a full earnest of opinions which characterised a friend to religion, to harmony, peace, and good-will to men; and Mr. Cuthell knew at the same time when the selling of this reply to the Bishop of Landaff was

first proposed to him, that Mr. Wakefield had before written to him on subjects of religious controversy, and that that excellent prelate held his general character in respect. There is nothing, therefore, upon earth which amounts even to incaution in the little which follows to complete the statement of his case.

Mr. Wakefield having printed the pamphlet by Mr. Hamilton, his own printer, without the smallest previous communication with Mr. Cuthell, he brought him the form of the advertisement when it was ready for sale, and desired him to send it for insertion in the newspapers marked in the margin of it; and, at the same time, desired Hamilton, his printer, to send the books, *already printed, to his shop*. This was over-night, on the 31st of January. Some of the books were accordingly sent over-night, and the rest next day.

The advertisements having appeared in the morning papers, Mr. Cuthell was, of course, applied to for them by booksellers and others, and sold them accordingly, *not* because he sold *everything*, much less works on *political subjects*, and, least of all, by unknown authors; but because his mind was fully prepossessed that the work he was selling was *an added publication to the long catalogue of Mr. Wakefield's other writings*, the character of all which, for learning and morals, had been universally acknowledged, and whose character for both had ever been undisputed. The book having become offensive, Mr. Cuthell was put in process by the Crown, and the service of it on his person was the *first* intimation or suspicion he had that the book was different from the many others which he had long been in the course of selling without offence or question. It is scarce necessary to add, that he then discontinued the sale, and sent back the copies to the author.

This, gentlemen, is the case as it will be established by proof. I shall not recapitulate the principle of the defence which you are already in possession of, much less the application of the evidence to the principle, which appears to me to be self-evident, if the principle can be supported; and if it be denied or disputed, I only desire to remark, that no person in my station who has ever made a point, desiring the law to be reserved to him, has ever been refused by the noble and learned Judge—I mean the right of having the facts found by special verdict, that the law may be settled by the ultimate jurisdiction of the country, because judges at *nisi prius* must follow the current of authorities, however erroneous the sources of them may be. *If you, the jury*, therefore, shall, from the evidence, believe that Mr. Cuthell was innocent in intention, you may find *the publication*, and *negative the intention* charged by the record; by doing which, if the defendant be legally guilty, the Crown, notwithstanding that negative, will be entitled to judgment; whereas, if you find a general verdict of guilty, the term guilty, in the general finding, will comprehend your opinion of the criminal intention charged, though it was not your intention to

find it; and Mr. Cuthell will not be allowed to controvert that finding as a fact, although you, the jury, actually rejected it, his guilt being part of your verdict, and conclusive of the intention which you disbelieved.

With regard to the book itself, though I leave its defence to its eminently learned author, yet there are some passages which I cannot help noticing. [*Here Lord Erskine commented upon several of them, and then concluded as follows.*] I was particularly struck, indeed, that the following passage should have made any part of the indictment:—"We, sons of peace, see, or think we see, a gleam of glory through the mist which now envelops our horizon. Great revolutions are accomplishing; a general fermentation is working for the purpose of general refinement through the universe."

It does not follow from this opinion or prepossession of the author, that he therefore looks to the consummation of revolutions in the misery or destruction of his own country. The sentiment is the very reverse: it is, that amidst this continued scene of horror which confounds and overwhelms the human imagination, he reposes a pious confidence, that events, which appear evil on the surface, are, in the contemplation of the wise and benevolent Author of all things, leading on in their consequences to good, the prospect of which Mr. Wakefield considers "*as a gleam of glory through the mist which now envelops our horizon.*" I confess for one, that, amidst all the crimes and horrors which I certainly feel mankind have to commiserate at this moment, perhaps beyond the example of any former period—crimes and horrors which, I trust, *my* humanity revolts at as much as any other man's—I see nothing to fear for our country or its Government, not only from what I anticipate as their future consequences, but from what they have produced already. I see nothing to fear for England from the destruction of the monarchy and priesthood of France; and I see much to be thankful for in the destruction of papal tyranny and superstition. There has been a dreadful scene of misfortune and of crime, but good has, through all times, been brought out of evil. I think I see something that is rapidly advancing the world to a higher state of civilisation and happiness, by the destruction of systems which retarded both. The means have been, and will be, terrible, but they have been, and will continue to be, in the hand of God. I think I see the awful arm of Providence, not stopping short here, but stretched out to the destruction of the Mohammedan tyranny and superstition also. I think I see the freedom of the whole world maturing through it; and so far from the evils anticipated by many men, acting for the best, but groping in the dark, and running against one another, I think I see future peace and happiness arising out of the disorder and confusion that now exists, as the

sun emerges from the clouds; nor can I possibly conceive how all this ruin, falling upon tyrannous and blasphemous establishments, has the remotest bearing against the noble and enlightened system of our beloved country. On the contrary, she has been the day-star of the world, purifying herself from age to age, as the earliest light of heaven shone in upon her; and spreading with her triumphant sails the influence of a reformed religion and a well-balanced liberty throughout the world. If England, then, is only true to the principles of her own excellent constitution, the revolt of other nations against their own systems cannot disturb her Government. But what, after all, is my opinion, or the judgment of the Court, or the collective judgment of all human beings upon the scenes now before us? We are like a swarm of ants upon an ant-hill, looking only at the surface we stand on; yet affecting to dispose of the universe, and to prescribe its course, when we cannot see an inch beyond the little compass of our transient existence. I cannot, therefore, bring myself to comprehend how the author's opinion, that Providence will bring, in the end, all the evils which afflict surrounding nations to a happy and glorious consummation, can be tortured into a wish to subvert the Government of his country.

The Attorney-General has admitted—I notice it to his honour, because all attorney-generals have not been so manly and liberal—the Attorney-General has admitted that he cannot seek, in this land of liberty, to deny the right of every subject to discuss, with freedom, the principles of our constitution—to examine its component parts, and to reason upon its imperfections, if, in his opinion, imperfections are to be found in it. Now this just admission cannot be qualified by a harsh and rigorous scrutiny into the language employed in the exercise of this high and useful privilege. It never can be said that you may tickle corruption with a straw, but that you must not shake it at its root. The true criterion, therefore, comes round again, at last, to *the MIND and INTENTION*, which by taking the whole work together, and the character of its author, into consideration, it is *your* office to determine; and the concluding sentence of this publication, in which Mr. Wakefield must candidly be supposed to have summed up the purpose and application of his work, is quite decisive of its spirit and purpose—viz., that instead of looking to new sources of taxation to support the continuance of *war*, the safety of our country would better be consulted in making an effort towards *peace*, which, if defeated by the fraud or ambition of our enemy, would unite every heart and hand in our defence. Hear his own concluding words:—"RESTORE the spirit of your constitution, correct your abuses, and calm your temper; THEN (and surely they who have been successful in their predictions through all this conflict have more reason to expect attention to their

opinions than those who have been invariably wrong), THEN, I say, solicit peace; and, take my word for it, the French Republic, so far from insisting on any concessions of humiliation and disgrace, will come forward to embrace you, will eagerly accept your friendship, and be proud of a connection WITH THE FIRST PEOPLE IN THE UNIVERSE. Should I be mistaken in this event, and have formed a wrong judgment of their temper and designs, *still the good effect of this advice will be an inestimable acquisition*—a vigorous and generous UNANIMITY among ourselves."

In the defence I have made, there are but few passages I have noticed. Respecting those, I am entitled to the protection of your candour; but you are not to conclude that the others are indefensible because I do not defend them—the defence of the book (as I before observed to you) being placed in other hands more fit to manage it; and it would have been out of my province, in Mr. Cuthell's case, to have entered more at large into the subject.

*THE PROCEEDINGS against SACKVILLE, EARL OF THANET,
AND OTHERS, for a Misdemeanour. Tried at the Bar of the
Court of King's Bench, on the 25th of April 1799.*

GENTLEMEN OF THE JURY,—It now becomes my duty to address you—but for three of the defendants only ; because, though nothing could possibly have separated their cases in argument, yet it was thought prudent not to embarrass the mind of any one advocate with so many facts and circumstances as the defence of all of them might eventually have involved. My learned friends who sit behind me were, therefore, to have defended the other two gentlemen ; but as they have not been at all affected by any part of the evidence, it may, perhaps, be thought advisable by the Court, that they should *now* be acquitted, lest their testimony should become material hereafter for those who remain under trial.

Several observations were made by the Attorney-General, in his short and dispassionate address to you, well worthy of your attention. He told you that he could not conceive a greater offence against the justice of any country, nor indeed against the very character of justice itself, than an attempt to confound and overbear its judges and ministers in the administration of law. I admit it freely. The undisturbed and unruffled course of justice is the universal source of human security. Statesmen have, in all ages, distracted governments by their ambition ;—parties will always create animosities, and sometimes confusion, by their discordant interests ;—tumults will occasionally arise out of the best of human passions, in the best-ordered States ;—but where an enlightened and faithful administration of justice exists in any country, that country may be said to be secure.

It has pleased God to give us a long reign of that security in England. Indeed, if I were to be asked what it is which peculiarly distinguishes this nation from the other nations of the world, I should say that it is in *HER COURTS* she sits above them ; that it is to her judicial system she owes the stability of all her other institutions : her inhabitants have for ages lived contented under her laws, because they have lived in safety.

Gentlemen, the Attorney-General had certainly no occasion to enter into any explanation of his own conduct in the course of this

prosecution : it was never my purpose to impeach it. The question is not, whether he is justified in having arraigned the defendants ? but, whether, upon the whole evidence, they are guilty or not guilty ? I say, upon the *whole* evidence ; because, to secure myself an impartial hearing, I think it my duty to tell you, in this early part of my address to you, that I mean to call witnesses in their defence. You have heard attentively the accusing testimony : AUDI ALTERAM PARTEM. It is not two days ago that, in a similar stage of an important trial, the noble Judge upon the bench took occasion to remark to a jury, that this was so sacred a maxim of justice, that we were frequently reminded of it by seeing it inscribed upon the very walls of our courts.

It has been also truly observed to you (as the observation applies to the first of the defendants upon the record, my noble friend and client, Sackville, Earl of Thanet), that the charge against *him* is of a most deep and serious complexion. I think so too. He is a man of illustrious rank—a hereditary judge and legislator of the kingdom ; and a judgment, therefore, against *him*, is of far greater consequence than to a mere private man. It is a great impeachment of such a person that he infringes the constitution of his country, of which he is a dignified guardian ; that he disturbs the execution of those laws of which he is a high magistrate ; and that, forgetting the duty annexed to his exalted station, the duty of giving the example to the people of order and obedience, he excites them to tumult, and violates even the sanctuary of justice with misrule and violence. Mr. Fergusson, though inferior in rank to the noble Earl, stands eventually in a situation, perhaps, of still greater delicacy, and is involved in deeper consequences. The son of a late eminent lawyer in the other part of the island, who filled also a high situation in its magistracy ;—himself bred to the English bar ; not as a fashionable branch of education, or as a useful introduction into life : but engaged in it learnedly, honourably, and successfully, as a profession, and as a profession by which he must live. A young man so circumstanced has surely a most serious claim to your attention, and even to the most indulgent consideration. As to the other gentlemen, I need hardly speak of them ; because, though their names have of course been reiterated in the questions put to the witnesses, nothing approaching to criminal conduct has been established against them. We are here, therefore, upon a mere question of fact. You cannot but have observed, that the Attorney-General and myself, instead of maintaining opposite doctrines, perfectly agree upon the principles which ought to govern your decision. The single object of inquiry is, the truth of this record. Is the charge proved to your satisfaction ? or, rather, *will* it be so proved when the *whole* cause has been heard ?

In adverting to what the charge is, I need not have recourse to the abstract I had made of the information. The substance and

common sense of it is this :—That Mr. Arthur O'Connor had been brought, by legal process, into the custody of the Sheriff of Kent ; that a special commission had assembled at Maidstone, to try *him* and others for high treason ; that, upon the opening of the commission, he had again been committed by the Court to the same custody ; that he was afterwards again brought up to the bar, and found not guilty ; and that, after he was so acquitted, but before he was in *strict form* discharged by the order of the Court, the defendants conspired together, and attempted to rescue him. This is the essence of the charge : the disturbance of the Court, and the assaults stated in the different counts of the information, are only the overt acts charged to have been done, in pursuance of this purpose, to rescue the prisoner. The *criminal purpose* to rescue Mr. O'Connor, is the fact, therefore, of which you must be convinced, to justify the verdict which the Crown has called upon you to pronounce.

Before I proceed to address myself to you upon the evidence, I will do that which must make it manifest that it is not my wish to confound your understandings in the investigation of facts ; for I will begin by relieving your attention from the consideration of all circumstances that are neither disputed, nor fairly disputable, either as they are the result of what you have heard already, or, as I think they must remain when the whole case is before you. I admit, then, that Mr. O'Connor, when he heard the verdict of the jury in his favour, was disposed to leave the court : the presumption, indeed, as it arises out of universal practice, as well as out of the law that warrants it, is, that he, as well as others, thought that the verdict of not guilty entitled him to do so. Neither can it be disputed that a warrant did in fact exist, and that its existence was known, since it appears that the officers stated in open court that they had one : and it is not material for me to dispute, nor is it, perhaps, disputable, that Mr. O'Connor knew of their intention to arrest him ; and, if he did know it, human nature is stronger than all the evidence in the world to convince every man of his disposition to escape from it : and I admit further, that a most honourable person, who gave his evidence with a candour which reflects high honour on his character, has added a circumstance which, though it could not be strictly received as proof, may be true, for anything that touches the merits of the case, viz., that there had been a communication to the Court that there were disaffected persons disposed to rescue the prisoner.

Having admitted these facts, I, in my turn, have a right to bring to your recollection, that it is an indisputable fact, resting upon the whole of the Crown's evidence, that the officers, strongly impressed with this idea, rushed suddenly and impetuously forward, on Mr. O'Connor's stepping over the bar when the verdict of not guilty was delivered ; and indeed Rivett, upon his cross-examination, dis-

tinctly admitted, that, owing to the apprehension of a rescue, he rushed into court with more precipitation than under other circumstances he could have justified; and that a great bustle and confusion existed before he approached any of the defendants, or even saw their persons. This *admitted* origin of the disturbance removes all difficulties from the consideration of the cause; and Mr. Justice Heath declared, that there was a scene of confusion and violence in court, such as he had never seen, nor could possibly have expected to see, in a court of justice. The single question therefore, is, *what share the defendants had in it?* Did the disturbance arise from any original acts of theirs? or were they, on the contrary, first pressed upon by the officers and their assistants, who, though they might be engaged in what they mistakenly supposed to be their duty, from an expectation of resistance, necessarily created confusion by their forcible entry into a crowded court? Were the defendants engaged in any conspiracy or combination to deliver Mr. O'Connor? That is the great, or rather the only question; because, if this does not appear from the evidence, all their acts, even if they were ultimately to remain as they appear at present, are perfectly consistent with the conduct of gentlemen suddenly and rudely trampled upon in a tumult, though without, perhaps, being the particular objects of violence by those who created it.

The natural course of considering which of these propositions ought to be adopted by reasonable men is to set out with tracing a motive. There can be no offence without some corresponding inducement to commit it. It is not alleged that these gentlemen ignorantly or wantonly insulted the Court—an indiscretion which can only happen among the lowest orders of the people. The charge upon them is a *deliberate* and *pre-existing* combination to deliver Mr. O'Connor, by confusion and force, from a warrant which they knew to be impending; and the acts attempted to be proved upon them can find no place in any reflecting mind, but as they are believed to be the result of such a conspiracy.

Now, I have always understood it to be the great office of a court of justice, when evidence is to be opposed to evidence, to consider the probabilities of the transaction; indeed, a judicial decision is nothing else but the bringing up facts to the standard of reason and experience. I have already described the situations of the only two defendants whose cases you can have occasion to consider—the one, as a high peer and magistrate of the kingdom, with the natural consciousness of the duties inseparable from exalted stations; the other, standing in a manner for his very existence upon the dignity and decency of his deportment in the courts, which habit as well as principle, had taught him to reverence and respect. Yet the charge upon such persons is, that

open, undisguised acts of violence were committed by them, in a place which the Attorney-General has, with great propriety, assimilated to the place where we now sit, because nothing more forcibly assists the judgment than bringing the scene under the immediate notice of the senses; and I am, besides, speaking to gentlemen of the county of Kent, who must themselves know the place without the aid of this comparison, though you cannot know it better than I do. I have spent many laborious hours of my life in the court at Maidstone, though the labour was always rendered delightful by the reflection that I never had to plead in vain, before gentlemen of your description, in the cause of innocence or truth. The Attorney-General, then, has assimilated the court of Maidstone to this court. He says that the prisoner sat where my learned friends now sit behind me; that the bench of the solicitors, where the confusion began, cannot be better described than by the place occupied by the King's counsel now sitting around me. The seat of the counsel may be considered to be placed where these gentlemen are now sitting before me; and the vacancy in the middle, between the bench and me at this moment, must be supplied by the table of which we have heard so much; while the judges *there* must be considered to be placed as they are *here*, elevated in situation as in rank, and commanding the most distinct and immediate view of every part of the court. Under these circumstances, you are asked to believe that Lord Thanet and Mr. Fergusson—the one possessed of a large hereditary fortune in Kent, and who could not but know that his person was as well known to every man in Maidstone as St. Paul's Church to the inhabitants of Ludgate Hill; the other, standing upon a table within six yards of the Judges, in the robes of his profession, close by a large chandelier, described at that time by all the witnesses to have been fully lighted. You are desired, I say, to believe that these two persons, without any motive upon earth brought home to them by any part of the evidence, engaged publicly in a scene of audacious riot and violence, in the public face of the most dignified Court, in the presence of all its numerous officers, of an acute and intelligent bar, of the Sheriff and all his train, of a jury composed of the principal gentlemen of the county, and of all that concourse of attendants upon an important State prosecution which either duty or curiosity had collected. I maintain that the history of the world does not furnish an example of such a total departure from every principle of human action, and from all common sense and prudence, in the commission of a crime. The interest of the parties to commit it appears to be nothing—the project utterly impracticable—detection absolutely certain—the reproach, to men of character, severe and inevitable—the legal punishment not less so; and all those consequences notorious to men of the meanest and most uncultivated understandings.

Gentlemen, the mind of man cannot avoid collecting and accumulating these absurdities ; but they are too important to be thus run over. They must be viewed separately, to have their proper effect.

First, then, let us search for a motive strong enough to impel honourable men to encounter such desperate difficulties in the pursuit of a dishonourable, useless, and impracticable purpose. Have you any evidence—have you the suggestion—have you even the insinuation of counsel, that the defendants ought to be classed amongst those evil-disposed persons, if any such existed, whom Mr. Justice Heath took notice of, but upon report only, as attendant on the trial? The noble Earl came down, under the process of a subpoena, to give evidence for the prisoner, not even of any fact connected with his conduct, but merely to state what he knew of Mr. O'Connor as an acquaintance, and what he had collected from others concerning his character in the common intercourse with the world. But why should I seek by observation to remove the imputation of a motive corresponding with the misconduct which is imputed, when it is but common justice to the Attorney-General to admit that he did not even attempt to insinuate anything of the sort? Yet my noble friend remains as a criminal before you, charged with the violation of that which is the most sacred in civil society, branded with the resistance of authorities the most dignified and important, in order that a person supposed to be an object of high suspicion by the Government of the country, might be left at liberty to perpetrate the treasons which the Duke of Portland's warrant had for its object to defeat—treasons which, if successfully perpetrated, were, in their most direct and obvious consequences, to strip the noble Earl of all the splendid inheritance of rank and property descended to him from his ancestors through so many generations. Mr. Fergusson will forgive me if I say, that the principal property which he can die possessed of, must be the fruits of a profession which the same treasons were pointed to destroy ; yet he, too, must be believed, without a shadow of evidence, or even the suggestion of his accusers, to have engaged in the desperate effort of affording shelter and opportunity for treasons which were to dissolve the courts in which he practises, to destroy that system of law which he has been bred to understand, and to set up, instead of it, a new order of things, by which he must descend from the eminence conferred by education and experience, and mix in the common ranks with ignorant and undisciplined competitors.

But, it seems, they were not indifferent to the deliverance of Mr. O'Connor ; for, upon his acquittal, they hastened to the bar, and congratulated him on the verdict. They certainly did so, in common with many others ; and although the impulse of per-

sonal kindness which directed them was honourable, it may be set down, not so much to the individuals, as to the characteristic benevolence of Englishmen. The characteristics of nations depend more upon their histories and their governments, than upon the temperaments of men arising from natural causes. The English constitution was always, in *theory*, a constitution of freedom; but it only became so in *practice* by the numerous and finally successful struggles of our free and virtuous ancestors against oppressive abuses of authority. Many eminent persons to whom this country is indebted for her liberties, having stood upon their trials, and having obtained deliverances from the tribunals of justice, has gradually produced a general sympathy in the minds of Englishmen, when men are standing for life or for death before their country. This is an almost universal and peculiarly characteristic feature of the inhabitants of Great Britain. It is not confined to the vulgar, as an ignorant and even an immoral prejudice, but pervades all the classes of society. It is compounded of a principle of humanity, of a spirit of national pride and dignity in the freedom of our institutions, and of a sense of security derived from them. No reasoning, therefore, can be more false than that, when men are accused, and even upon pregnant evidence, of conspiracies against the Government, they who seem to feel an interest in their deliverance are alienated in their affections to the State. Englishmen of all descriptions receive their sense of innocence from their country's verdict, and they feel a sort of satisfaction which, I verily believe, exists in no other country. Irreligion and false liberty have been seen to delight in blood, to rejoice in revengeful sacrifices, to think it music to hear the agonising groans of expiring sufferers, and a spectacle of triumph to gaze upon their mutilated bodies; but the sense of liberty in a country long humanised by the influence of a free Government, shrinks back even from the consequences of the justest prosecutions, looks with an eye of tenderness upon the accused even before the conscience is convinced of innocence, and feels an invincible impulse of pleasure in the legal deliverance from guilt. Long, long, may this remain the characteristic feature of our country! When Mr. O'Connor, therefore, was pronounced not guilty, was it any proof of a conspiracy to rescue him from other charges, that he was congratulated on his deliverance, which he was not only entitled to by the verdict of the jury, but which the evidence on the trial, and the Judges' remarks on it, had previously and distinctly anticipated? The question, therefore, again recurs—Were the defendants the active authors of the rescue, for the purpose charged in the indictment? The MOTIVE is gone already, not only as wholly unascrivable from the total absence of evidence, but because my learned friend who laid the case before you was too much a man of honour (as I have already done him the justice to acknowledge) to

ascribe, or even to insinuate, a motive which he knew did not exist, and which he had neither evidence nor reasonable presumption to support.

If, however, a criminal act, though without the proof, or even the imputation, of a referable principle of action, may still be believed by a jury dispensing the mild and rational justice of this country; the next consideration, in weighing the probabilities, is, how this purpose, supposing it still to exist, without any corresponding interest, was possibly to be accomplished?—for men cannot be presumed to engage in the most perilous enterprises, not only without inducement, but without even a shadow of hope or prospect that their object is practicable. The situation of the court is not only present to your own recollections from your perfect acquaintance with it, but is brought before your eyes by its just comparison with this. Mr. O'Connor stood at the bar where my learned friends now sit, surrounded by hundreds of persons not attempted to be implicated in any design to favour his escape; on the right, and on the left, and behind, were the public streets of Maidstone, from whence no passage without observation was to be expected; and before they could even be approached, an outlet must first have been made through groves of javelins in the hands of those numerous officers which the exemplary attention of the Sheriffs of Kent has always provided for the security and dignity of the Court. It was, therefore, not merely improbable, but *naturally impossible*, to deliver, or even hope to deliver, a prisoner from the public bar of such a court, in the view of all its Judges, its counsel, and attendants, without the support of great force and numbers, and without, likewise, a previous concert and combination to direct them with effect. The next consideration, therefore, which directly follows these immutable principles of judgment, is the fact as it applies to them—Was there either *force* exerted, or *numbers* collected, or *measures concerted*? The defendants cannot be made responsible for any act of violence which might be committed by any disorderly persons in the street. It is nothing to them that Mr. Justice Buller's servant was knocked down in one of the avenues of the court, whilst they were admitted to have been in its centre. What act of disorder or violence do you find committed by Lord Thanet, by Mr. Fergusson, by Mr. O'Brien, or by Mr. Gunter Browne, who has been made a defendant, only because, without any offence on his part, he appears to have had his head broken! for this gentleman is literally not identified by any part of the proof as having been even in court at all, except as he was seen complaining to the Judges of an assault committed on himself. Lord Thanet is a man of high spirit, and of a strong body; it must have been a warm interest, as I have repeatedly observed to you, that could have embarked him at all in such a business; and, when embarked in it, he must reasonably be supposed to have engaged with activity in the accomplishment of an object for which he risked

so much ; yet it has appeared already, by the testimony of one of the most respectable and the most correct of all the witnesses for the Crown, and it will be made manifest hereafter beyond all doubt or question, that, at the very moment (and it was but a moment) when the evidence has the remotest application to any of the defendants, he lay back inactively, holding his stick with both hands across his body, to defend himself from the assaults of only one man, not stronger than himself, and whose blows he neither attempted to return, nor invited the aid of others to repel ; so far from it, that Mr. Fergusson, who is supposed to have put his character and situation to so much hazard, though he stood close by, is not even charged with having exerted his strength on the occasion, but to have contented himself with flourishing a small stick in his hand without striking or aiming at anybody—a circumstance neither true, nor possibly consistent with the truth of the designs which are imputed to him ; and no act of violence, or even gesture to incite it, is imputed to any other person, near this supposed focus of confusion, at the only time when Lord Thanet and Mr. Fergusson are affected even by the solitary evidence of Rivett. So much for the force exerted in the pursuit of a purpose which no force proceeding from a few persons could have accomplished ; and as to any previous concert or combination amongst numbers which can possibly involve them, it is rendered absolutely incredible by the whole body of the evidence ; for the Attorney-General has proved that there were attendant on Court a great number of gentlemen known to profess the same principles and opinions with the defendants, and most intimately acquainted with Lord Thanet in private life—gentlemen who, I have no doubt, are here at this moment assembled by the just anxiety of friendship and affection ; yet it is not imputed to any of those numbers I allude to, though all present in court, and within reach of whatever was transacted in it, that they took any part, directly or indirectly, by force, by speech, or by seeming encouragement, in the scene of disorder which took place. If Lord Thanet, then, is a conspirator, *with whom* did he conspire ? since, with the exception of the four other defendants, three of whom must be acquitted for want of evidence, accusation itself does not even attempt to implicate one man of his numerous friends and acquaintance, who must naturally be supposed to have been impressed with similar feelings, nor indeed any one man, high or low, whom he can be proved to have ever spoken to, or seen, in the whole course of his existence ; and if obscure and unknown persons are to be taken to have been instruments in this confusion, there must have been some evidence of direction or encouragement to others proceeding from the defendants, which is not attempted to be sworn by any of the witnesses. This most important part of the case shall not, however, be left upon the failure of evidence, or even upon the absence of accusation ; for I will call many of those gentle-

men, who will tell you that they were wholly ignorant of any design to rescue the prisoner—that they saw no confusion or riot, except that which the precipitate entry of the officers occasioned; and who, by tracing the defendants in their eyes through the whole of the period in question, will be able positively to contradict the most material parts of the evidence which personally affects them.

Gentlemen, the next question upon the score of probability is this. Supposing that, contrary to everything either proved or asserted, the defendants *had* felt an interest in the escape of Mr. O'Connor, and *had* conceived it to be *practicable*, could they possibly have hoped to escape detection—more especially Lord Thanet and Mr. Fergusson, whose persons were so notorious—the one, from his high rank and residence in the county whose principal inhabitants surrounded him; and the other, from being in his professional dress, in the place assigned to him as counsel on the trial, and, in the very midst of his companions, engaged in the business of the Court? Lord Thanet, therefore, and Mr. Fergusson, upon the Attorney-General's own admission, who has justly assimilated the court at Maidstone to the one we are now assembled in, could no more have hoped to escape immediate detection and punishment for the riot they are supposed to have engaged in, than I could hope to escape from them, if, taking a strong interest, as I must be supposed to do, in the acquittal of my clients, and thinking there was no safety for them but by making such a confusion in court as to prevent your hearing the evidence, or the Judge's observations on it, I should, when I had finished my address to you, and the Judge was beginning to sum up to you, publicly begin or join in a scene of noise and uproar, under the eyes of the Judges, as they now look at me—of the officers, now sitting before me—of you, the jury, to whom I am speaking—of my numerous friends at the bar, whose honour is connected with the dignity of the Court—and of the whole crowd of spectators, hundreds of whom I am known to personally, and all of whom are acquainted with my person.

Gentlemen, I can observe from the absurdity and impossibility of the case I am putting, that I seem to be trifling with the subject; but that sensation, which I have no doubt is general, and which I cannot help even feeling myself, displays the irresistible force of the actual case before you; because I defy the wit, or wisdom, or imagination of man to attempt even a shadow of a distinction between the case I have put to you and that of Mr. Fergusson: for, why should *he* be supposed, any more than *myself*, who am the object of comparison, to have embarked in this impracticable project of disgrace, dishonour, and injustice—in the dress of counsel, as much as I am, on the trial which engaged the Court—and in a place, the exact similarity of which to the room that holds us is no assertion of mine, but a fact so unalterably established by the whole evidence

as to be employed by both sides as an assistant to the mind in judging of the accuracy and consistency of the proof?

The next recourse to probability, if your judgments, as in all other cases, are to be governed by reason and experience, is, if possible, still more unanswerable and decisive.

Supposing the defendants, without interest or motive, and without the possibility of success, and without even a chance of escaping from detection and punishment, to have nevertheless publicly insulted and disturbed the Court by acts of disorder and violence, *who must have been the witnesses to such a scene?* Who, for instance, must have been the witnesses, if Mr. Fergusson, as has been asserted, had stood upon the table of the court—the table round which the counsel are ranged, directly under the eyes of the Judges and the jury, and had flourished a stick round his head to favour the escape of the prisoner, by preventing the officers from approaching him—*who, I say again, must have been the witnesses to such a phenomenon?*—who, amongst the Judges, or counsel, or officers, or spectators, but must have seen it?—who, that had seen it, could possibly have forgotten it?—and who, that remembered it, could have hung back from the proof of such inexcusable misconduct? Yet the proof of this fact, to which the whole Court must have been, as it were, but one eye, and an eye of indignation, is not supported by any one person, either upon the bench or at the bar, or amongst the numerous officers of the court. On the contrary, we shall see, by and by, the difference between the testimony of a reverend Judge of England and that of a Bow Street officer, when I come to advert to the evidence of Mr. Justice Heath, which is directly and positively inconsistent with Rivett's, on whose single and unsupported testimony this extravagant and incredible part of the case is alone supported.

But it seems they have given judgment against themselves by their demeanour and expressions upon the occasion. Lord Thanet, it seems, said to Mr. Justice Lawrence, as Mr. Abbot expressed it, who did not hear what the learned Judge had said, to which Lord Thanet's words were an answer, "that it was fair he should have a run for it"—words which cannot be tortured into any other meaning, more especially when addressed to one of the Judges of the court, than that, speaking in extenuation of Mr. O'Connor's conduct, who had visibly made an effort to escape, he thought it fair that a person so circumstanced should have a run for it if he could; a sentiment which, by the by, no man in his senses would have uttered, more especially in such a quarter, if he had felt himself at all implicated in a criminal endeavour to assist him. And if Lord Thanet did not speak at this moment with all that complacency which in general so much distinguishes him, nor offer, as Mr. Sheridan did, his assistance to the Judges, it is not at all to be wondered at; for it must be recollected that he had just suffered in

his person, not as you have it upon the evidence at present, but had been most roughly and severely assaulted. Mr. Justice Buller is proved to have said, that Mr. Sheridan conducted himself in a manner greatly to his satisfaction; but the very contrast which this evidence is introduced to furnish, instead of operating against Lord Thanet, is an additional argument in his favour. Lord Thanet and Mr. Sheridan are as one man in everything which relates to public opinions, and friends in private life. Upon what principle, then, can it be made out that Mr. Sheridan should be assisting the Judge, whilst Lord Thanet, who had no connection with Mr. O'Connor which did not equally belong to the other, should be behaving like a madman, unsupported by any of his friends or acquaintances, who were attending as witnesses upon the trial? But the time of this conversation, if I had before adverted to it, would have rendered all these observations wholly unnecessary; for it was *after* the riot (as it indeed must have been) that Mr. Justice Lawrence conversed with Lord Thanet, saying to him, amongst other things, "that he hoped Mr. O'Connor's friends would advise him to submit to his situation." Now, I may safely assert, that, high as Lord Thanet's rank is, that learned Judge would not have spoken to him as a person from whom he solicited and expected assistance, if he had himself observed him, or if he had known him to have been observed by others, disturbing the order of the Court. On the contrary, if there had been a reasonable ground for impeaching Lord Thanet's conduct, the learned Judge would have executed the law upon him—he would have attached him for his contempt; and surely no person in court had a better opportunity of observing everything that passed in it. Mr. Justice Lawrence was one of the youngest of the learned Judges who presided at the trial, with stronger health than belonged to all of them, which enabled him to keep up his attention, and to observe with acuteness. He was, besides, deeply interested in whatever concerned the honour of the Court; and the elevation of the bench on which he sat gave him a full view of every person within it. Indeed, Lord Thanet, at the time this misdemeanour is imputed to him, was directly before him, and under him, and not farther from him than Lord Kenyon at this moment is from me. I have, therefore, a right to say, that not only nothing is to be presumed against Lord Thanet from what he said, but that, on the contrary, a strong presumption arises in his favour when we hear the evidence from any other mouth than that of the learned Judge himself; since, if *he to whom the discourse was addressed*, and who was the best judge of the fair construction to be put upon it, had considered it in the light it has been represented and relied on, he might have been called as a witness. Mr. Justice Heath and Mr. Serjeant Shepherd, the Judges in the same commission, were examined to matters infinitely less material.

Gentlemen, let us now pause a little, to consider the effect which I feel myself entitled to derive from these observations. I consider myself to have advanced no farther in the argument than this :—

First, That there was no assigned nor assignable motive for the criminal purpose charged by the indictment.

Secondly, That it was a purpose palpably impracticable, and which, therefore, no reasonable men could possibly have engaged in with any prospect of success.

Thirdly, That whatever might have been the probable issue of such an enterprise, detection and punishment were certain.

Fourthly, That, admitting the evidence you have heard to be free from all errors, the defendants did not conduct themselves like men engaged in such a pursuit, nor appear to have been supported in a manner reasonably or even possibly consistent with the alleged conspiracy.

Fifthly, That although the witnesses against them, if the transaction had been justly represented, must probably have been the greater part of the Court, and certainly all that part of it elevated both by situation and authority above the rest; yet that there has been not only no such concurrence of testimony against the defendants, but, on the contrary, the most correct and respectable witnesses have concurred in destroying the remainder of the proof.

Sixthly, That the expressions imputed to Lord Thanet cannot possibly affect him, without supposing that he publicly gave evidence against himself, even to one of the Judges, who, upon the evidence of his own senses, had authority to have punished him upon the spot.

Lastly, That it appears, by the whole body of the proof, that the confusion arose when the officers burst, with improper and indecent precipitation, into court; that it began and ended almost in the same breath; and that, during the short moment of its continuance, there was such a scene of tumult and confusion as to render it impossible for the most attentive observer to give any clear and distinct accounts of the transaction.

If these conclusions, gentlemen, be the unavoidable result of the Crown's evidence when brought to the common standard of man's reason and experience, it appears to me that you are bound to return a verdict for all the defendants, even if I should call no witnesses; because, to justify a verdict of *guilty*, it is not enough to collect from the evidence that the defendants *may* be guilty, or *probably are* guilty. No; their innocence must be quite incompatible with the fair result of the whole proof; for, if two different conclusions may be reasonably drawn from the same state of facts, you are bound in justice to adopt the one which is supported by the greater number of probabilities. Now, if this plain rule of judgment be not wholly departed from, and even trampled under foot, I take upon me to say positively and firmly, because I am making

my appeal to men of understanding and liberal education, that the evidence for the Crown, without any at all on my part to oppose it, taking it all together, and considering the fair result of it, is not sufficient to convict any of the defendants. This proposition, however, cannot be supported by general observations, nor by that general appeal to the proof which I have been engaged in ; it must be examined accurately in the detail. I shrink from no part of it. I will sum it up to you as if I spoke to you from the bench ; and I pledge myself to make out, to the satisfaction of every unprejudiced mind, that all that I have hitherto said to you, though absolutely necessary by way of introduction, has suffered from its *generality* ; and that the *particulars* of the proof will illustrate and confirm, beyond all question, every proposition of fact, and every principle of judgment, which I have already brought before you.

The first witness examined for the Crown is Mr. Serjeant Shepherd, who was joined with the Judges in the Special Commission. This examination is highly important in every part of it ; because, when it becomes necessary to compare the evidence of different witnesses, in order to arrive at a safe conclusion from the whole, nothing can be so satisfactory as to find some person on whose testimony the judgment may repose with safety. My learned friend (as all who know him must have anticipated) delivered his evidence with the greatest clearness and precision, and in a manner most dispassionate ; and when you recollect, besides, that he is a man of singular ability, and that, from his elevated situation in the court, he had the best opportunity of observing everything that passed, you cannot fail to pay greater attention to his testimony, and to that of Mr. Justice Heath, who immediately followed him, than to any other witnesses, however respectable.

In bringing before you Mr. Serjeant Shepherd's evidence, I will not trouble you with that part of it which went to facts which are now no longer disputed, but will take it up from the time when the jury returned into court. Mr. Serjeant Shepherd says, "Lord Thanet was standing before the bar at which the prisoners stood, with his face turned towards the Court ; he was rather to the right hand of Mr. O'Connor, nearest to the great street of Maidstone, where the gaoler sat." Speaking of Mr. O'Brien, he said, that "he stood in the same line, but rather to the left of Mr. O'Connor ; that something had been before said by the Bow Street officers, who were making a noise, and had been desired to be quiet. When the verdict of not guilty was delivered, some persons (but whom, I know not) said, 'Then they are discharged ;' and somebody at the table replied, 'No, they are not discharged.'" And here I have no objection that what Mr. Serjeant Shepherd omitted may be filled up by Mr. Solicitor-General's evidence, and that the answer from the table was to Mr. Fergusson, who, on hearing the verdict pronounced, had said the prisoner was discharged ; he said

it, however, before the Court had declared the law upon the subject. As counsel for the prisoners, it was natural he should be interested in their deliverance; and he is not indicted for having mistaken the effect of the law, but for having conspired to obstruct the Court in administering it. The Attorney-General said, very properly, "I bring the defendants before you, not for considering the prisoners discharged by the verdict, but for an attempt to rescue them by violence and tumult, after the Court had declared that they were in custody." "At this time," continued the learned Serjeant, "Mr. Justice Buller said to the gaoler, 'Put the other prisoners back, and let O'Coigly stand forward;' when one of the Bow Street officers stood up on a form, and said he had a warrant against Mr. O'Conner." This, you observe, was the first time there was any mention of a warrant in court; so that what had before fallen from Mr. Fergusson was merely his sudden idea of the effect of the verdict of not guilty, at the moment it was pronounced, and which, at all events, must, in a few minutes afterwards, have delivered the prisoner; and there is no evidence whatever, that, at the time he said so, a fresh custody was a matter of apprehension or contemplation. "Whilst Mr. Justice Buller was passing sentence, my attention," continued Mr. Serjeant Shepherd, "was directed to O'Coigly; and when he had finished, I observed Mr. O'Brien turn round and look at Mr. O'Connor, and, immediately afterwards, look down with a very slight motion and inclination of his head." And here, gentlemen, it is impossible not to admire that delicate sense of justice, which no man possesses more than my learned friend the Serjeant, and which dictated to him the remarkable reserve which accompanied this part of his evidence. He recollected that a witness is not to put himself in the place of a jury, by drawing *his own* conclusions from his own testimony; but accurately to state what he hears and sees, and to leave the conclusion to those whose province it is to decide. He therefore, with the utmost propriety, forbore from expressing what appeared to him to be Mr. O'Brien's purpose; but said to you, "*I rather choose to describe his gesture;*" which he accordingly did. This fact, therefore, delivered with the restraint which the integrity and understanding of the witness so properly suggested, affords no evidence whatever of evil design in Mr. O'Brien, much less of concert or combination with the other defendants; and, indeed, the proceedings of this very day have afforded an instance how dangerous it would be for the most sagacious persons to collect, from gestures only, what passes in the mind of another. When Lord Romney, not choosing to advance in his evidence beyond what his memory with certainty suggested, declined giving a further answer to a question put to him, the noble and learned Chief-Justice interposed, and put the question to him again. I admit that it was his duty to do so; but his lordship will forgive me if I say, and I appeal to his honour

for the truth of it, that he was convinced at the moment, not only that I thought the *direct contrary*, but that I had publicly and rudely expressed a sensation of dissatisfaction ; since, looking at me very significantly, his lordship told me that it was *his duty* to repeat the question. Nevertheless, I do declare upon my honour, and I appeal to Mr. Gibbs, to whom I was speaking at the moment on quite a different subject, *that no such idea was passing in my mind as my gestures were supposed to have expressed* ; yet no man is a more acute observer of human nature than his lordship, and nobody, certainly, was ever better acquainted with my countenance. *So much for gestures.* It is, indeed, strongly in Mr. O'Brien's favour, that at the moment he looked down, as described by the witness, he could not be acting in concert with Lord Thanet ; for Serjeant Shepherd saw Lord Thanet *at the very same moment*, and swore that he was standing with his face to the Court, and that he never changed his position. The Serjeant added, that "when the last word of the sentence was pronounced, Mr. O'Connor jumped with his left foot upon the bar, and his left hand upon the shoulder of Mr. O'Brien," but who does not appear to have held out his hand to assist him. Mr. O'Brien, on the contrary, though he could not have but continued in view for some time longer, is charged with *no one act whatsoever* ; and it would be strange, indeed, to convict a gentleman of a rescue, because, standing near a prisoner meditating an escape, he had laid his hand upon his shoulder. But this part of the case will be put quite at rest hereafter ; because Mr. O'Brien is perfectly well known to several gentlemen of distinction, present in court at the time, and not at all implicated in the riot, who will all tell you that they saw him distinctly, and that he was not concerned in any violence or disturbance whatsoever. I am not, however, called upon to do this, because there is literally no proof to be answered.

The remainder of Serjeant Shepherd's evidence, as it applies to Lord Thanet, is so absolutely decisive, that you will be driven to pronounce by your verdict whether you give credit to this most respectable and observing witness, or to a Bow Street officer, who was himself the author of the confusion ; for the Serjeant added, that "when Mr. O'Connor had jumped over the bar, and he had lost sight of him, the officers rushed into court to arrest him, and a great noise ensued ; and at this time"—(*Gentlemen, the time is most material and critical, because it can apply to no other than the precise time sworn to by Rivett*)—"I saw Lord Thanet," said the Serjeant, "standing, as I have described him, with both his hands over his head,"—which he also described to you by putting himself in the same defensive posture, as far more expressive of his situation than any words could communicate. This, I say, is the single point of time to be looked at ; for the remainder of the Serjeant's original evidence applying to a subsequent period, described

a scene of great confusion, in which he said he could discover nothing distinctly; that many persons were upon the table, some asking questions, and others endeavouring to restore order. It is not, therefore, at *this* period that you are to look, since no part of the evidence at all applies to it; but at the moment when Lord Thanet is alone affected by Rivett's evidence the Serjeant's testimony has a direct and decisive application; for, upon his cross-examination, he said in so many words, "I never saw Lord Thanet look round, or change his position as I have before described it till the very instant the officers rushed into court; and *then* I saw him with his stick held as I before described it; but I am *bound* to say that he appeared to me to be acting on the *defensive wholly*." This concluding evidence is an exculpation of Lord Thanet, and must have been so intended. I did not even put the question to the witness; he himself conscientiously added that he was *bound* (bound, of course, in justice to Lord Thanet, who was accused of *active violence*) to say that he appeared to be only acting *in his own defence*. Now, gentlemen, there can be neither honour, nor advantage, nor security, bestowed upon the administration of government or justice, which this prosecution is avowedly instituted to support, if men can be punished, not merely upon doubtful evidence, but upon evidence which directly contradicts the charge. That a court of justice must not be insulted, or even disturbed, is a proposition which must be acceded to by every man acquainted with the first elements of civil life—that a charge of such a high misdemeanour well justifies the solemnity of a trial in this place, is another proposition which cannot be disputed; but the heinousness of offences, and the necessity of suppressing them by punishment, does not alter the quality of the proofs by which they are to be established. On the contrary, it was pleasant to attend to the just reserve in that respect with which the Attorney-General laid the case before you—he stated his own evidence in general terms, but without commenting upon it, or enforcing it; reserving his observations till the evidence on both sides should be heard. But we are not even engaged at present in balancing contradictory evidence, but in showing that the accusing evidence is in itself defective, and even exculpatory.

Mr. Serjeant Shepherd was properly selected as the first witness for the Crown. He sat, from his station as Judge, in an elevated position, where he had a better opportunity of observing than others; and he accordingly appears to have observed everything which passed. Yet, instead of fastening guilt on Lord Thanet, he sees him from the time the jury returned into court standing in one position; not looking round as if he was watching the motions of Mr. O'Connor, or engaged with others in attending to them; not even looking towards the side of the court from whence the arrest was to proceed, but upwards to the Judges; not opposing

his body as an obstacle in a narrow passage through which the officers were to pass; not presenting a front to them which a man of his strength, with the intentions imputed to him, must naturally have been expected to do; but standing, as any other person, attentive to the trial, till the officers, apprehending a rescue, rushed with violence into court, and pressed upon and assaulted him; for had he not been pressed upon and assaulted he could not have been seen by Serjeant Shepherd in a posture of defence; and if he was first active in obstructing and assaulting Rivett in the manner which he, and he only, has sworn to, why should not Serjeant Shepherd have seen it, since his eye was so constantly fixed upon Lord Thanet, from the time the jury returned with their verdict till the confusion became general, which is subsequent to the period of Rivett's evidence, as to enable him to tell you that he did not shift his position, nor make a gesture or motion, till the officers and others rushed in upon him; and *then*,—*i.e.*, immediately, at the same moment to which alone the evidence has any application—he sees Lord Thanet with a stick over his head, which he thinks himself BOUND to express, and even to *describe* to you as a passive posture of defence. This evidence, which so completely exculpates Lord Thanet, is not less applicable to Mr. Fergusson; for, if he, who is placed by all the witnesses as standing close by him, had been an active conspirator, armed with a stick, which he was flourishing over the heads of the officers, can you possibly suppose that he would have withheld his assistance from Lord Thanet, who was visibly overpowered; or that a man of Lord Thanet's strength, though assisted by Mr. Fergusson, who is about six feet high, and a young man of great activity and strength, should be perfectly passive under the blows of Rivett, endeavouring only to save his person from violence, without retaliation, or even a motion to the accomplishment of his object?

The evidence of Rivett is further exposed by his having denied that Lord Thanet had a stick—a fact established beyond all question; and by his swearing that he took the stick from Mr. Fergusson, and struck him with it—when it will appear by and by that he took it from behind his own coat when he assaulted Lord Thanet. This last fact, however, I ought to have passed over at present, because it arises out of my own evidence, which I do not wish at all to mix with my observations on the case of the Crown.

Gentlemen, the other Judges, with the exception of Mr. Justice Heath (whose testimony will also support the innocence of the defendants), have not been examined, though their positions in court were so highly favourable; neither has the bar been examined, who, if Lord Thanet had been in the situation which some of the witnesses have described, must have all seen it to a man; and their not having been called affords a strong inference that their evidence would not have been favourable.

Mr. Hussey, who was next examined, said, "I saw Mr. O'Connor attempt to get over the bar" (*a fact never disputed*); "and at that time Lord Thanet was standing with his back to the prisoners. I saw somebody pressing forward, who said he had a warrant; but I saw no paper. Lord Thanet *seemed* to press himself towards the bar, and *seemed to be desirous* to interrupt his progress." I dare say the Rev. Mr. Hussey meant to tell you what he saw; but he has expressed nothing. What can be collected from such expressions? Can you convict any man upon evidence which imputes *no act*, but only a *seeming desirousness*? Lord Thanet *SEEMED* to press himself towards the bar, and *seemed* to be desirous of interrupting the officer's progress. Did the witness *SEE* him do the one or the other? If he had, he would of course have so expressed it; and if Lord Thanet had actually done so, why should not Mr. Serjeant Shepherd have equally seen it, who observed him accurately *at the very same moment*? The same answer was given by the last witness, Mr. Parker; and from which one might have been desired also to conclude that Lord Thanet was an active rioter. He *SEEMED* to be encouraging. But what did he do when he *SEEMED* to be encouraging? He put his hand *so*! What then? If I am not proved to be in combination or concert with any one, nor to have myself committed any act of violence, is riot or disorder to be imputed to me only because, in the midst of a scene of uproar, I appear to be irritated from a sense of danger, or from insults which I have received? If, indeed, a person could not account for his presence in a scene of riot, the case might be different: the presumption might *then* supply the defect of actual proof. If people were engaged in the destruction of a house, or in the commission of any other violence, and I was seen bustling or making gestures in the midst of them, my very presence might be evidence against me, "How came you there, Mr. Erskine?" might be the question, "at a distance from your own house, and in the middle of the night?" But these presumptions have here no application; for Lord Thanet was attending as a witness under the process of the Court, and is described by one of the learned Judges as standing originally in his proper place, and not changing his position. The whole of Mr. Hussey's evidence, therefore, amounts only to this—that Lord Thanet *SEEMED* to press forward, and that, too, *at the very same moment* when Serjeant Shepherd described him as unmoved and motionless, with his back to the prisoner, and his face, of course, towards the Court.

Gentlemen, I feel that it must be painful to you to be obliged to attend to these minute observations; but it is a solemn duty imposed upon me to point out every fact and circumstance of the proof, by which you are sworn to regulate your verdict. The sameness and repetition are nauseous; but that is the very strength of the defendants' case, because it shows the concurrence

of the testimony which acquits them. How, indeed, can one expect variety in the discussion of a transaction which, all the witnesses say, was like a flash of lightning, beginning on a sudden, when, from the apprehension of a rescue, the officers rushed into court, and ending (as far as the evidence goes) in the confusion which almost immediately followed, leaving only for your decision whether, if, in such a crowd, it happens that I am rudely pressed upon, I am a criminal for defending myself? and whether, if in the midst of such a scene of confusion, some of my postures or gestures are not understood by others who see me, and who may be unacquainted with what has happened to me, I am to be convicted of a crime which not only affects my property, but my personal liberty, and, what is still dearer to me, my personal honour and reputation?

Lord Romney is the next witness, whose evidence was just what might have been expected from a person in his situation. Highly interested in the honour of the county where he has great hereditary estates and honours, where he has important duties to perform, and where, owing a particular attention to the King's Court, he felt, no doubt, a corresponding anxiety that it should suffer no disgrace or interruption in its proceedings. He was placed, besides, in that part of the court where he was entitled by his rank to sit, from whence he had an opportunity of observing what was transacting. Thus circumstanced he says:—"I saw the Bow Street officers forcing a passage, and striking blows. Whom they struck I do not know; there was a sword brandishing on the table. Thinking things bore a serious aspect, I crossed the table, and saw the prisoner escaping; he was brought back by the javelin-men. I said to them, 'Form yourselves round the prisoner, for he is not yet discharged.' I was told afterwards I had said 'he was not acquitted.' I believe Mr. Fergusson said so. I have no doubt I made the mistake." Gentlemen, undoubtedly Lord Romney meant only to say that Mr. O'Connor was not discharged, though the answer was not made to him by Mr. Fergusson, for I shall call the gentleman himself who answered him, not that it is in the least material, except that it proves that Mr. Fergusson was noticed at that time by Lord Romney. And surely, gentlemen, if he had been acting like the fool and madman, and, I will add, like the knave, he has been represented to you—if in his professional dress, he had been publicly flourishing a stick upon the table, Lord Romney, who was close by him, must inevitably have observed him; yet his lordship does not speak of him as out of his place, or as engaged in any act of disorder or violence. Another most important fact is established by Lord Romney's evidence; for, though his lordship said that he should have been so much hurt if the county had been disgraced, that his attention was not directed to individuals, and that in the confusion

he could not tell who had been struck in the passage by the officers, yet he added that *VERY MANY blows were struck and MANY persons hurt*. Yet Rivett says that Fugion struck no blows, that Adams struck no blows, that the messenger struck none, nor he himself any but those which were struck at Lord Thanet. Rivett, therefore, according to his own account, was the only person engaged, and successfully engaged, against the rioters; yet you are desired to believe that a large combination of strong and active conspirators were favouring an escape by violence. This is quite impossible; and the blows therefore, which were observed by Lord Romney, were the blows which the *officers themselves* wantonly inflicted; since it will appear hereafter, by witnesses whom the Court cannot but respect, and whose evidence cannot be reasonably rejected, that they rushed in like madmen, striking with violence the most harmless and inoffensive persons, which compelled others to put themselves into that passive posture of defence that Lord Thanet has been so frequently and so distinctly described in. There is nothing more that is material in Lord Romney's examination. Something was alluded to respecting a conversation with Mr. Justice Lawrence; but his lordship, with the greatest propriety, not choosing to advance beyond his most perfect recollection, did not particularise it; nor could it be material, for, besides that it appears to be supplied by other evidence, if it had been of any importance, Mr. Justice Lawrence himself would no doubt have been called as a witness. For my own part, I think it extremely likely that it has been already correctly represented. Lord Thanet, smarting under the blows he had received, did not probably exhibit the same courtesy with Mr. Sheridan; but I have already observed to you, that this circumstance gives me another important witness—no other than Mr. Sheridan himself, whose deportment was thus remarked and approved of; for, besides that it is impossible to ascribe a criminal motive, either from public opinion, or acquaintance with the prisoner, which did not apply as much to the one as to the other, Mr. Sheridan will tell you, upon his solemn oath, that he observed all that passed; and he will be able most distinctly to exculpate both Mr. Fergusson and Lord Thanet from every part of the charge.

Gentlemen, I will now state to you the Solicitor-General's evidence. He says, "I kept my eye fixed on Mr. O'Connor. When the jury gave their verdict I observed him and Mr. Fergusson. I particularly fixed my eyes upon them. I observed Mr. Fergusson speaking to Mr. O'Connor, and Mr. O'Connor put his leg over the bar. I called out, 'Stop him!' Mr. Fergusson said, 'He is discharged.' I answered, 'He is not discharged.' Mr. Fergusson then said to Mr. O'Connor, 'You are discharged.' I repeated, 'He is not discharged.' I observed the guoler lean over, and lay

hold of Mr. O'Connor. Some person was at this time pressing forward, and Mr. Fergusson complained to the Court. The officer was pressing into court in order to get round to Mr. O'Connor." Now, gentlemen, it is fit just to pause here a little, to consider this part of the evidence. The time filled by it is not above two or three minutes, for it is only the interval occupied by the sentence upon O'Coigly; and if a combination had existed between Lord Thanet and Mr. Fergusson, and other persons in the secret, is it probable that Mr. Fergusson would have made himself the conspicuous figure which I am supposing the evidence truly to represent him to have done? His conduct, besides, appears quite different from Rivett's account of it. Did he enter into private resistance or altercation? No. He made a regular and public motion to the Court; the Judge yielded to the suggestion; the officers were directed to stand back for the present, and then the sentence was pronounced. This is not the natural deportment of a person engaged in a conspiracy. Nothing but the purity of Mr. Fergusson's intentions, and the unconsciousness of offence, could have induced him to put himself so publicly forward by a regular motion to the Court; and such a conduct is surely very inconsistent with that of a person who was meditating at the moment to carry his point by violence, in the teeth of the Court which he addressed. The Solicitor-General further said, "Rivett, the officer, said he had a warrant against Mr. O'Connor. Mr. Justice Buller spoke to the officers, commanded silence, and proceeded to pass sentence. When the sentence was finished, I observed Mr. Fergusson, and some other persons whom I did not know, *encouraging* Mr. O'Connor to go over the bar." Here we must pause again. Mr. Gibbs asked the witness, upon his cross-examination, "Did you hear him say anything? Did you see him do anything?" The Solicitor-General proved no one thing which Mr. Fergusson said or did. I am sure I mean nothing in the least disrespectful to the learned gentleman; but it certainly did not occur to him at the moment, that it is not the office of a witness to pronounce by his own evidence that a man *encourages* or *supports*, but he is to depose what he heard him *say*, or *saw* him *do*, from whence the jury are to draw the inference which is fit. I really mean no sort of reflection. Perhaps it arose from the habits of the Court of Chancery, whose practice is different from ours, and where the depositions are of a very general nature. But suppose the Solicitor were to die whilst I am speaking to you, and that, though you should be satisfied as to all the rest of the evidence, you wished to have it explained *with precision* what was intended to be conveyed when it was said Mr. Fergusson was *encouraging*, would you condemn Mr. Fergusson upon that evidence, without knowing distinctly what act he had committed? Could you convict a fellow-subject upon the general evidence that

he *encouraged* mischief, without knowing *what he did*? Certainly not. You must hear the *fact*; and it is then for *you, and for you only*, when you have heard it, to draw your own conclusion. The noble and learned lord, with whom we in a manner spend our lives in this place, is in the constant course of saying to witnesses, "Tell us what was *done*, and we will judge of its quality." By these observations I am not impeaching the evidence of the Solicitor-General. I am commenting as a lawyer upon the result of it; and I do say, as a lawyer, that it is giving no evidence at all to swear that a man encouraged, or *appeared* to be encouraging, without stating the *facts* on which that impression of his mind was founded. Mr. Solicitor-General went on to say, "I did not see Mr. O'Connor till he was brought back by the officers; for at the instant that Mr. O'Connor jumped over the bar, three or four persons leaped from the witnesses' box upon the table, and mixed among the rioters; all the lights, except those before the Judges, and the chandeliers, were extinguished. Mr. Fergusson, at the moment Mr. O'Connor jumped over the bar, turned round, and *appeared* to follow Mr. O'Connor; *but I will not positively swear it.*" I am very glad, gentlemen, that he did not, because it would have been unpleasant to swear that positively which will be positively contradicted, by those, too, who are of as good faith, and who had as good an opportunity of observing. It is a mere misapprehension; and I would say to the Solicitor-General, if I were to see him at his own table, or at mine, *that he is mistaken.* Indeed, in a scene of confusion, no man can tell what he sees with any certainty or precision, and images are frequently confounded in the memory. The Solicitor-General then said, that Mr. Stafford jumped upon the table, and drew a sword; and, speaking of Lord Thanet, he said, he went across the table, and that he saw him in conversation with Mr. Justice Lawrence, the particulars of which he did not hear; but that, when he went across the table again, he said he thought it fair he should have a run for it. He said it rather in a tone of anger, in consequence of what had fallen from Mr. Justice Lawrence. Gentlemen, this last part of the evidence applies to a point of time when the disturbance was at an end—after everything had passed in the presence and observation of the Court—after the disturbance had given manifest and just offence to the Judges, and after they had declared that their proceedings had been interrupted, and their authority insulted. You cannot, therefore, believe, that, under such circumstances, when Lord Thanet could not but know that high offence had been given to the justice of the county, he should come voluntarily forward, in the hearing of the King's Judges, and confess himself to be an accomplice in a high misdemeanour. These observations are not made to induce you to believe that Lord Thanet's expressions have been misre-

presented to you, but to convince you that the making them at the time, and to the persons to whom they were made, arose from a consciousness that he had no share in assisting Mr. O'Connor. Any other construction of the expression would amount to the confession of a crime, of the magnitude of which Lord Thanet could not, from his education and knowledge, be ignorant—a crime which is, perhaps, put by the Attorney-General in a very modest shape on this record; for, without meaning to moot the point of law, I am not quite sure that rescuing a person from a warrant for high treason, though impending and not actually executed, is not felony at the least. The right of Mr. O'Connor to deliver himself from such a warrant, if he could escape before it was executed on his person, was an opinion which Lord Thanet might correctly or incorrectly entertain; but to enhance the confession of such an opinion into an admission of the crime *in himself*, is contrary to every human principle and feeling, and therefore not a reasonable conclusion of human judgment. Gentlemen, these are my observations upon the evidence of the Solicitor-General as it affects Lord Thanet; and, as it applies to Mr. Fergusson, it is very important; for if Mr. Fergusson had been flourishing a stick in the manner which has been falsely sworn against him, what should have induced the Solicitor-General to say, only in general terms, that he saw him *encouraging*? Will any of my learned friends maintain, that if the Solicitor-General could have proved in terms that Mr. Fergusson had a stick in his hand till it was wrested from him by the officers in repelling violence by violence, that he would not have *distinctly stated it*? It is not, indeed, asserted, that the Solicitor-General meant to convey that meaning by the term *encouraging* which he employed; nor is it possible that the Attorney-General should not have stated a fact so material in his opening, if he had known he could establish it from the mouth of a gentleman placed in so respectable a station in the world.

Gentlemen, Mr. Justice Heath was next examined; and there is no part of the proof more important, particularly as it affects Mr. Fergusson, than the evidence of that very learned, and I must add, that truly honourable witness, who was one of the Judges in the commission, and presiding at the trial. He said, that “a messenger from the Secretary of State had applied to the Court for liberty to execute a warrant upon Mr. O'Connor; that permission had been accordingly granted.” So that Mr. O'Connor was not to be ultimately liberated, but was to remain amenable to the process in the hands of the officers. That “after the verdict had been given and the sentence pronounced, the messenger, *very unadvisedly*, went to the corner most removed from the door, and said aloud, ‘My Lord, may I now execute my warrant?’ Presently afterwards I saw Mr. O'Connor put one leg over the bar, and draw it

back again." I have already reminded you, gentlemen, that at this time there was a doubt in the minds of some as to the effect of the verdict to liberate the prisoner; and I admit that Mr. O'Connor, when he put his leg over the bar, knew of the existence of the warrant, and intended to evade it. Mr. Justice Heath then said, "A violent riot and fighting took place, such as I never before saw in a court of justice. It seemed to me to be between the constables on one hand, and those who favoured the escape of the prisoner on the other." This shows plainly that Rivett did not speak the truth when he said that the blows were all on the side of the rioters against the officers; whereas the fray, as described by Mr. Justice Heath, arose at first from the activity, if not the violence, of the officers; which I will confirm hereafter by the most respectable testimony. "It being dark," continued the learned Judge, "I could not see the numbers of the combatants; but I think there must have been ten or twenty engaged in it. I saw Mr. Stafford brandishing a sword over their heads. The combat might have lasted for five or six minutes. I saw Mr. Fergusson, in his professional dress, standing upon the table with many others. He turned round, and said, 'My Lord, the constables are the persons to blame: it is they that are the occasion of the disturbance.' Before I could give him an answer, he turned round towards the combatants; and then my attention was drawn *from him* to the more interesting scene of the fight." Every part of this evidence is a decisive exculpation of Mr. Fergusson. WHEN was it that Mr. Justice Heath saw him upon the table? I answer, at the very moment, nay, at the *only* moment when blame is attempted to be imputed to him. By whom was he thus observed? Not by a common person, unqualified to judge, or uninterested in the order of the Court, but by one of its highest and most intelligent magistrates. It appears further, that at the moment Mr. Fergusson publicly, and in the proper quarter, imputed blame to the officers (I do not mean such blame as should subject them to punishment, because they might be acting in the supposed discharge of their duty, but blame as it occasioned the disturbance), he did not endeavour to conceal his person from the Judges at this only period of imputed disorder, but regularly addressed the Court in the dress of his profession, and openly complained of the authors of the confusion. It is therefore quite impossible, upon Mr. Justice Heath's evidence, to mix Mr. Fergusson with violence; for the learned Judge distinctly stated, that after having *seen* and *heard* him as he described him to you, he observed him *no longer*, his attention being drawn from him to "the more interesting scene of the fight." Is not this a most positive declaration of Mr. Justice Heath, that the place where Mr. Fergusson stood was *not* the scene of the fight, and that he was not personally engaged in it; for he turned his eyes *from him* to *the scene of the combat*, and of course to the persons of the combatants; whereas, if Mr. Fergusson, with

a person so remarkable, and in the dress of his profession, had been *himself* a rioter, the learned Judge must have pursued *him* with his eyes, instead of losing sight of him, and must have seen him more distinctly. But the truly honourable Judge does not leave the exculpation of Mr. Fergusson to any reasoning of mine, having concluded his evidence with these remarkable words: "I must do him the justice to say, that in the short time I saw him, which was not above a minute or two, I did not see him do, or hear him say, anything to encourage the riot. I thought myself in great danger, and all of us also." This testimony, gentlemen, is **ABSOLUTELY CONCLUSIVE**. He saw, indeed, Mr. Fergusson for but a minute or two; yet it is the only period to which the evidence against him has any reasonable application. It was not a riot of long duration, in which a man might be guilty at one part of it, though not at another; it was almost momentary, and the whole of the scene within the observation of any one spectator. When we consider, therefore, that this learned and reverend person stood in the same situation as the first witness who was examined for the Crown—that he had an opportunity, from his situation in court, of seeing everything which belonged to the scene of combat, as he termed it—and when he nevertheless so separated Mr. Fergusson from it as to feel himself *compelled* to say what he did in the close of his testimony—we ought to give to *his* words a weight beyond the voice of a thousand witnesses. A judge can have no interest in such a subject; and you cannot justly appreciate such a testimony without taking into your consideration his excellent character, his long experience in the world, and the deep regard which he cannot but feel for the faithful administration of justice.

Gentlemen, it is impossible for me to know how these observations affect you. Self-complacency (too common among mankind) frequently makes false estimates of the effects of argument upon others, by measuring them with the results of one's own understanding—an infirmity which frequently leads us to repose upon them as finished and conclusive when the most material parts belonging to them have been omitted. This perhaps may be my own case at this moment; but it does strike me, I confess (accustomed as I am to the proceedings of courts of justice), that I should be perfectly safe in *now* leaving in your hands the honours and characters of my clients, even if I had not a witness to bring before you in their defence: indeed, I have studiously avoided all consideration of my own evidence in my remarks upon the case of the Crown; in everything that I have said I have wished you to consider that I had none at all to offer; and when I reminded you, in the preface of my address, that I had witnesses to bring before you, it was rather addressed to the Court than to you, and rather directed to secure attention to my observations than arising from any resolution to trouble you with hearing them. Nothing that I have

hitherto advanced has been built upon any new fact to be introduced by me ; I have been dissolving the evidence of the Crown by its own weakness ; I have been insisting that the respectable body of it is the strongest proof for the defendants, and that its only inconsistency is to be found where it affects them with guilt.

The next witness was Mr. Abbot, a gentleman at the bar. "He saw Mr. O'Connor make a motion to leave the court, and heard Mr. Fergusson say he was discharged. Mr. Solicitor-General answered that he was not discharged ; and then either Rivett or Fugion said he had a warrant. There was then a little confusion ; but the prisoners resumed their places, and Mr. Justice Buller proceeded to pass sentence on O'Coigly. When that was finished, Mr. O'Connor leaped over the bar towards his left hand ; a great tumult and confusion took place." No part of all this, gentlemen, was ever disputed. "I saw Lord Thanet on the table nearly before Mr. Justice Lawrence." This is also nothing. If Lord Thanet mixed in the riot, it could not be near Mr. Justice Lawrence, but in the other part of the court, where the prisoners were placed. "The learned Judge spoke to Lord Thanet, and said it would be an act of kindness in Mr. O'Connor's friends to advise him to go quietly to prison, lest some mischief should happen. Lord Thanet then turned round, and said—I did not distinctly hear the first words, but the concluding words were, '*To have a run for it*,' or '*Fair to have a run for it*.'" Gentlemen, I will not weary you with a long repetition of the same observations. I have observed more than once already, that if Mr. Justice Lawrence had considered Lord Thanet as having done anything to promote the riot, he would have acted accordingly ; and it would be, therefore, trifling with your time and patience to detain you further with Mr. Abbot's testimony.

Gentlemen, we are now arrived at Mr. Rivett ; and, retaining in your minds the testimony of the Crown's most respectable witness, on which I have been so long observing, I shall leave you to judge for yourselves whether it be possible that what he says can be the truth, independently of the positive contradiction it will receive hereafter. Indeed, the evidence of this man administers a most important caution to juries not to place too implicit a confidence in what is sworn with positiveness, but to found their judgments upon the most probable result from the whole body of the proof.

Rivett says, "I saw a gentleman, whom I was told was Mr. Thompson, and I have never seen him since. He asked me what business I had there, and if there was anything against Mr. O'Connor ;"—evidently meaning a warrant, as he afterwards explained it. I need not, however, pursue this part of his evidence, because he did not identify Mr. Thompson, though he sat before him in court, but pointed to another person. I pass on, therefore, to that part where he described the state of the court : "Many gentlemen,"

he said, "were seated upon the solicitors' bench," which has been already described to you as immediately before the prisoners, and without the counsel's seat, in which Lord Thanet appears to have sat till he stepped into that of the solicitors', where he was heard to speak to Mr. O'Connor, and congratulate him on his acquittal. It was in this place, and before and after this time, that Mr. Serjeant Shepherd described him as standing unmoved, with his face to the Court and his back to the prisoners. Rivett went on to say, "When the jury were coming in, I endeavoured to go nigh to the gaoler, when I was pulled down by the leg; and as soon as I turned round, I saw Mr. Thompson," who turns out not to have been Mr. Thompson. "I thought Mr. O'Connor looked as if he intended an escape. At that time there was a noise and violence; and Mr. Fergusson said to the Court, 'What business has this fellow here, making a noise?'" Now, gentlemen, this cannot be a correct statement as it respects Mr. Fergusson, since it has been sworn by all the Crown's most respectable witnesses that he made it a regular motion from the bar, and the officers were desired to stand back. "I told his lordship I had a warrant from the Duke of Portland to arrest Mr. O'Connor; and the Judge said I should have him, and desired the gaoler to take care of the prisoners for the present. The sentence was then passed on O'Coigly; and as soon as it was finished, Mr. O'Connor immediately jumped out from the bar. There was then a great confusion in court; the gentleman who sat before me got up; Mr. O'Connor took to the left, and I called out to shut the door. I endeavoured to get forward, but was prevented by those gentlemen who had placed themselves before me and the other officers. I was pulled and shoved down two or three times, but by whom I know not. I jumped forward as well as I was able, and was endeavouring to pursue Mr. O'Connor, when Mr. Fergusson jumped on the table, and with a stick flourished it in this way, to stop me. Mr. Fergusson was in his gown. I sprang at him, and wrenched the stick out of his hand; and then he returned from the table, and went to his seat." I will not pause at this part of the evidence as it applies to Mr. Fergusson, but pursue it as it goes on to Lord Thanet; because, if I can show you that its application to him is demonstratively false when compared with the rest of the Crown's evidence, on which it must lean for support, it will destroy all its credit as it implicates Mr. Fergusson also. He says, "I was then knocked down by a person who pushed at me with both hands, and I immediately struck that person three or four blows." You will here be so good, gentlemen, as to consult your notes, as I wish to be correct in stating his evidence. Will your lordships have the goodness to see how you have got it?

[LORD KENYON and Mr. JUSTICE LAWRENCE referred to their notes.]

LORD KENYON. I have it, "I struck him with my stick."

Mr. ERSKINE. Gentlemen, you will now see, by the observations I am about to make upon this part of the evidence, that I could have no interest in stating it incorrectly; because, whichever way you take it, it involves a direct and palpable contradiction; but there is nothing like the truth, and it is always the best course to appeal to the authority of the Court. His words were, "He shoved me with both hands;" and, in his cross-examination, he afterwards described it, "I struck that person three or four blows: he called out, 'Do not strike me any more;' I replied, 'I will; how dare you strike *me*?' " You observe that he describes Lord Thanet as having no stick, and as having struck him; whereas Mr. Serjeant Shepherd saw Lord Thanet, at what must necessarily be the same point of time, standing with his face to the Judges, and his back to the prisoners, motionless, as I have repeatedly described him, till he must have received violence from some other person, since the Serjeant saw him leaning back, and DEFENDING himself with a stick which he held in both hands over his head—an account which, if any corroboration of such a witness could be necessary, I will establish by eight gentlemen who were present, and who will add besides, in contradiction of Rivett, that Lord Thanet was himself beat severely, and never struck the officer with either fist or stick. That Lord Thanet *had a stick* is beyond all controversy; and, having one, is it likely that a man of his strength and activity, engaged in such an enterprise, would only push at his opponent with his *hands*, or that Mr. Fergusson, who is charged as being an accomplice, would have contented himself with flourishing a little stick over his head?

Mr. ATTORNEY-GENERAL. I do not find that Rivett has at all said that Lord Thanet had a stick.

Mr. ERSKINE. I have been reading his original examination. I will state his cross-examination by and by, and then set both of them against the truth. He says further, and to which I desire your most particular attention, "I saw Mr. Fergusson flourishing a stick about the middle of the table. I went that way, to avoid the persons who had stopped up the passage. He endeavoured to prevent me; but I wrenched it from him, and struck him. *I had not then seen Lord Thanet.*" Now, gentlemen, I have only to beg that you will have the goodness to make some mark upon the margin of your notes of this fact, which the witness has had the audacity and wickedness to swear to. I use these severe expressions, which I have applied to no other witness in the cause, because I never wantonly employ epithets that are unjust. He was in such a situation that he cannot be mistaken in what he swears; neither does he qualify it with his belief; but takes upon himself to marshal the proceedings in his memory, and to affirm POSITIVELY both as to persons and times. Yet I will prove Mr. Fergusson to have been within the bar in his place when Rivett speaks of

him as on the table, and CERTAINLY WITHOUT A STICK. I will prove this—not by Bow Street officers, but by gentlemen as honourable as any who have been examined. Mr. Rivett told you, too, “that he came along from the great street where the Star Inn is, towards the prisoner, to arrest him; but that he went to the table to avoid the gentlemen who interrupted him in his passage towards him.” Lord Thanet is one whom he positively fixed on as having done so. Lord Thanet then interrupted him in his passage to the prisoner, which induced him to go to the table, where he had the conflict with Mr. Fergusson; and yet, according to his own deliberate declaration, he never saw Lord Thanet till *after* the stick had been flourished by Mr. Fergusson over his head, and till after he had wrenched it out of his hand; for *then it was*, and for the *first* time, that he swears to have seen Lord Thanet. This is totally inconsistent not only with the whole course of the evidence, but even with his own. And I will prove, besides, by a gentleman who sat next his lordship—Mr. George Smith, the son of a late chairman of the East India Company, a gentleman at the bar, and of independent fortune—that one of the first things Rivett did when he came into court, was to press rudely upon *him*; and that Lord Thanet, without having struck a blow, or offered any resistance, was attacked by these men in a most furious manner, which accounts for the attitude of defence in which he has been so often described.

No embarrassment or confusion can possibly attend the consideration of time; because, from the evidence of Mr. Serjeant Shepherd, there could be no interval. It was all in a moment. He saw Lord Thanet sitting down; he rose, and stood with his face to the Judges; and then the confusion began. But, at this time, I engage to prove most positively by many witnesses, that Mr. Fergusson was in his place at the bar; that he was forced upon the table in consequence of the tumult *after Lord Thanet had been knocked down*, and that he had NO STICK. This, indeed, is incontestably established by the evidence of Mr. Justice Heath, who saw him in that situation till he removed his eyes from him to the scene of confusion, which he could not possibly have done if the confusion had not become general whilst Mr. Fergusson remained in his place; and so far was he from seeking to mix himself with the riot which the officers were occasioning, that when Sir Francis Burdett, a gentleman possessed both of strength and spirit (if a rescue had been the object), was coming hastily across the table, from seeing the situation Lord Thanet was placed in, Mr. Fergusson, knowing that it would only tend to embroil instead of abating the confusion, took hold of him to prevent him, carried him bodily towards the Judges, desired the officers to be quiet, and, addressing the Court, said publicly, and in his place, “My lord, it is the officers who are making all this disturbance.”

What, then, is to be said for this Mr. Rivett, who swore that he

never saw Lord Thanet till *after* his conflict with Mr. Fergusson on the table, although Mr. Fergusson will appear to have at this time been in his place? Mr. Smith was as near Lord Thanet as I am now, when Rivett rushed by him, and attacked him, Mr. Fergusson being still in his station at the bar.

Gentlemen, he said further, in his cross-examination, that "he struck Lord Thanet several blows; that Lord Thanet desired him to desist, but that he had struck him once or twice afterwards." This was after Mr. Fergusson had gone across towards the Judges; so that the scene he describes as relative to Lord Thanet is not immediately upon his first coming into court, but afterwards, when, having gone out of his course towards the prisoner from the resistance he had met with in the passage towards him, he was obstructed by Mr. Fergusson at the table; whereas all the witnesses agree in placing Lord Thanet in the solicitors' box, the very passage which Rivett states himself to have left in consequence of resistance; and, therefore, he must have passed Lord Thanet, in the solicitors' box, *before* he could have approached Mr. Fergusson at the table; and if he met with any blows or interruption from him at all, he must have met with them *immediately upon his entering the court*; for Mr. Serjeant Shepherd's evidence establishes, that at that period violence must have been used on Lord Thanet, as he was in an attitude of *defence*. Rivett further said, that "Lord Thanet had nothing to defend himself against his blows," though Serjeant Shepherd saw and described him with a stick; and that "he saw no blows struck by anybody but himself." What, then, is the case, as it stands upon Rivett's evidence? That no blows were struck but his own; though a learned Judge has sworn to have seen many struck, and upon many persons; that he received no blows from Mr. Thompson—none from Mr. O'Brien—none from Mr. Fergusson—none from any of the defendants but Lord Thanet, nor from any other person in the court. It is for you to say, gentlemen, whether this statement be possibly consistent with a wide-spread conspiracy to rescue a prisoner by violence, of which the defendants were at the head.

Sir Edward Knatchbull saw no blow given to Rivett. He said, "I can by no means speak positively; but it appeared to me, that when somebody was endeavouring to keep Rivett back, ~~he~~ struck Lord Thanet with his fist. I saw no blow given to Rivett." So that Sir Edward Knatchbull's evidence, instead of confirming Rivett's story, mainly and importantly contradicts it.

Mr. Watson, the gaoler, was next examined. He remembers the directions given him not to discharge the prisoner, which I will not detain you with; and says, that "after sentence was passed, some person said to Mr. O'Connor, 'You are acquitted. What do you stand there for? Why don't you jump over?'" that Mr. O'Connor answered, 'Mr. Watson says I am not to go;' but that, immediately afterwards, he sprung over," &c. Thomas Adams,

who was then Mr. Justice Buller's coachman, "saw Lord Thanet with a stick in his hand, and saw it lifted up." We had got rid of that stick upon Rivett's evidence, and now it comes back upon us again when it is convenient to have it lifted up. He describes the stick as lifted up in this position (*imitating the witness*); whereas it could be in no such posture, as you must be convinced of from the observations I have already made to you. But this man's evidence is very material in this respect—viz., that in describing the assault of Rivett on Lord Thanet, he says, "I heard Lord Thanet say to him, 'What do you strike me for? I HAVE NOT STRUCK YOU:'" an expression of great importance in the mouth of such a person as Lord Thanet; and falling from him at the very moment when it could have proceeded from nothing but consciousness; and an expression that I will confirm his having used, by several of my own witnesses.

Mr. Brooks, who was next called, says, he "saw Mr. O'Connor when the jury returned. Mr. Fergusson held a sword or stick over the heads of the people." A sword, or something else, given to us in this confused manner, adds no force to the evidence; more especially when, upon being asked if he can swear with positiveness, he admits that he cannot.

Mr. Stafford was then examined, who says, "he sat under the jury-box, and could see Lord Thanet distinctly." I particularly asked him that question, and how far distant he was from him: he answered me, "Not above two yards from me—three times nearer than I am to you." He saw Lord Thanet, then, distinctly, at two yards' distance, and from the beginning to the end of the confusion; yet he swears "he did not observe him engaged in any obstruction." Afterwards, when the tumult became general, this witness has been described as brandishing a drawn sword—no doubt, from a sudden apprehension of danger, and to avert it from that quarter. Now, suppose Mr. Stafford had come down, out of mere curiosity, to Maidstone, to hear the trial, and had been seen flourishing this drawn sword in the midst of the affray—what should have prevented Mr. Rivett from considering this gentleman as the greatest rioter of them all? Why might he not the rather have represented him as brandishing it to favour the escape of the prisoner? One cannot, indeed, imagine a case of greater cruelty and injustice; but what could have been his protection, if Mr. Fergusson can be convicted on the evidence you have heard? Was not his situation in court, as counsel at the bar, equally respectable as that of the Clerk of the Arraignment? and is not the presumption of an evil design against the dignity of the Court equally removed from both of them? Yet the one is only described as flourishing a small stick; whilst the other was so wielding his metallic tractor, that if he had not pleaded a flat bar to the assize in the manner he conducted this falchion, the issue must have been blood. Mr. Garrow said to

him at the moment, "Take care that you do no mischief;" and undoubtedly Mr. Stafford neither did nor intended any; but that makes the stronger for my argument, and shows how little is to be built upon appearances which grow out of a scene of tumult. The case for your consideration seems, therefore, to be reduced to this—Whether you will believe the two learned Judges, and the other respectable witnesses? or whether you will depend upon the single and unsupported evidence by which violence has been imputed? Mr. Stafford, who was within two yards of Lord Thanet, has completely acquitted him; for had he been in the situation in which Rivett has placed him, what could possibly have prevented him from seeing it? It was also sworn by Rivett that Mr. Fergusson had a stick; but upon appealing to Mr. Stafford's evidence, who sat just opposite to him, we find that he had none; but that he extended his arms seemingly to prevent persons approaching that side of the court. Mr. Stafford admits, that when he saw Mr. Fergusson, it was in the midst of confusion; and it would be a harsh conclusion indeed, that Mr. Fergusson is guilty of the conspiracy charged on this record, because upon being forced out of his seat by the tumult which surrounded him, as I will show you he was by several witnesses, he had extended his arms in the manner you have heard. Mr. Stafford added, that the gaoler had hold of Mr. O'Connor's coat; that Mr. Fergusson forced himself between them, and that the gaoler stretched his hand behind Binns to take hold of the prisoner. This must be a mistake; for Watson sat as where my learned friend Mr. Wood is at present (*pointing to him*), and Mr. O'Connor stood as where Mr. Raine is now sitting (*pointing to him*); and at no part of the time is it even asserted that Mr. Fergusson was in the box of the solicitors, and consequently it was utterly impossible that he could have prevented the gaoler from keeping hold of the coat of the prisoner.

Mr. Clifford says he sat near the marshal. I thought he had said that he sat there as marshal; and, not knowing the person of the honourable gentleman, I thought he had been the marshal of the court. There was no new fact introduced by this witness.

Next came Mr. Cutbush. My learned friends appeared to be soon tired of his evidence; and it seemed to produce an emotion of surprise upon the bench, that a witness, in such a stage of the cause, should give such extraordinary testimony. He said, "I saw Lord Thanet; he was two or three yards from Mr. O'Connor. I observed nothing particular till I saw Rivett striking Lord Thanet on the back with a sword." Now, as it is admitted on all hands that no such thing ever happened, it affords another instance of the difficulty with which juries can collect any evidence to be relied on in a scene of uproar and confusion.

The evidence of the last witness, Mr. Parker, contains nothing which I need detain you with.

Gentlemen, I have now faithfully brought before you all that is material or relevant in the case of the Crown ; and having accompanied this statement with the observations which appeared to me to apply to it, let me suppose that my task was finished ; that I had nothing by which I could further defend my clients ; and that I were now to leave you to the Attorney-General's reply, and the assistance of the Court. Were this my situation, I should sit down confident that you could not pronounce a verdict against them, upon such equivocal evidence, either honourable to yourselves or beneficial to your country. I will not tire your patience by an extended recapitulation of arguments which you have heard already with so much patience and attention ; but I feel it to be my duty just to point out the inadequacy of the testimony.

The charge against the defendants is a conspiracy to rescue Mr. O'Connor from legal custody, by tumult and violence ; all the other acts, as they are put upon the record, and brought before you by evidence, being no otherwise relevant nor credible than as the means employed to effectuate that criminal purpose. Your belief of that purpose can therefore be the only foundation of a righteous verdict. Yet not only no part of the proof applies to establish it, but the existence of it is negated by every principle which can guide the human judgment. No motive, either built upon fact or flowing from reasonable presumption, has appeared ; none has even been suggested. The object, thus pursued, without an interest, was palpably useless and impracticable—detection and punishment inevitable—the crime, if committed, committed before the whole Court, its Judges and officers ; yet the evidence of it painfully and lamely extracted from a few, and that few overborne by the testimony of the most respectable witnesses, best situated to observe, and best qualified to judge of what was passing. I have, therefore, no more to ask of you, gentlemen, than a very short audience, while I bring before you the defendant's evidence. My case is this :—

It stands admitted that the confusion had not begun when the jury returned with their verdict ; that there was only a motion towards it when the officers were directed by the Court to be silent, and to stand back. The period, therefore, to be attended to, is the conclusion of the sentence on O'Coigly, when the officers, from their own account of the transaction, believing that Mr. O'Connor intended to escape from them, and giving them credit that such intention could not be frustrated without some violence and precipitation, rushed suddenly through the solicitor's box, where they met indeed with resistance, but a resistance which was the natural consequence of their own impetuosity, and not the result of any conspiracy to resist the execution of the warrant.

To establish this truth with positive certainty (if indeed it is not already manifest from the whole body of the proof), I shall

produce, as my first witness, Mr. George Smith, whom I before named to you, and who was one of the first persons in their way on their entering the court. He sat as near Lord Thanet as I now stand to where his lordship sits before you, and who, upon the principle of this prosecution, should, above all others, have been made a defendant; for he will admit freely that he endeavoured to push them from him with his elbow, when they pressed upon him with great and sudden violence. He will tell you, that at this time Mr. Fergusson was in his place at the bar; that Lord Thanet was in the place where Serjeant Shepherd described him; that he was violently struck, without having given the smallest provocation, without having made any motion, directly or indirectly, towards the rescue of the prisoner, or even looked round at that time to the quarter where he stood; that Lord Thanet, in order to escape from this unprovoked violence, so far from approaching Mr. O'Connor, endeavoured to get nearer where the counsel sat, when Rivett, instead of advancing straight forward in pursuit of his object, which was to arrest the prisoner, levelled repeated blows at him, as he was obliged himself to admit, while Lord Thanet lay back in the manner which has been so often described to you, protecting his head from the blows he was receiving.

In the same seat was Mr. Bainbridge, a gentleman educating for the bar, a near relation of the Duke of St. Albans, and a pupil, I believe, of my honourable and learned friend, Mr. Wood; a person who cannot reasonably be suspected of giving false testimony, to encourage violence and outrage against the laws of his country. Mr. Bainbridge will swear positively, that, when the officers came forward, Lord Thanet was in the solicitors' box, and Mr. Fergusson in his place at the bar, where he remained till the witness saw him forced out of his place, and obliged to stand upon the table, *and that he had no stick*. What then becomes of Rivett's evidence, who swore he never saw Lord Thanet till *after* this period, although it is admitted that it must have been by the tumult, in which he falsely implicated his lordship, that Mr. Fergusson was driven out of his place? This is absolutely decisive of the case; for it will appear further, that Mr. Fergusson continued in his place after the period when Lord Thanet was seen defending himself. It was rather insinuated than sworn to distinctly, that there were gentlemen coming from the other end of the court, as if to lend their assistance; but this operates directly in exculpation of Mr. Fergusson, who prevented Sir Francis Burdett from approaching to that quarter of the court. Sir Francis was certainly not advancing for the purpose of riot, but to extricate Lord Thanet: yet Mr. Fergusson, lest it should add to the confusion, publicly prevented him, under the eye of the whole Court.

The next witness I shall produce to you will be Mr. Charles Warren, son of the late highly celebrated physician—a most

honourable young man, and who, I verily believe, will be as great an ornament to our profession as his father was to his. Mr. Warren was placed at the table, attending in his gown as counsel, and had the most undeniable opportunity of seeing Mr. Fergusson, who sat near him, in his gown also. What Mr. Fergusson did cannot be matter of *judgment* or *opinion* in such a witness, but matter of *certainty*. The conduct imputed, if it really existed, could neither be unobserved nor forgotten; it was exactly the same as if I were at this moment to break out into madness, and insult the Court. In such a case, would any of you qualify your evidence of such a scene, passing before your eyes, with *I think*, or *I believe*? No: you would say at once, I saw that gentleman hold up his fist, and insult and threaten the Judges. Such extraordinary transactions address themselves directly to the *senses*, and are not open to qualifications of opinion or belief. For the same reason, Mr. Smith and Mr. Bainbridge must both be perjured if the evidence of Rivett be the truth; and Mr. Warren (subject to the very same observation) will swear positively that he saw Lord Thanet severely assaulted, and THAT HE DID NOT STRIKE. Is this a mere negative in opposition to Rivett's affirmative oath? Certainly not; for there are some negatives which absolutely encounter the inconsistent affirmatives, and with equal force.

Let me suppose any man to say at this moment, "Mr. Mackintosh" (who sits close by me) "struck Lord Thanet," who is just before me, whilst I was speaking to you, the jury and I were to answer that "he did not,"—that would, no doubt, be in *form* a negative proposition; but it would comprehend a *counter-affirmative* if I had seen Mr. Mackintosh in such a situation, relative to Lord Thanet, as that he was not near enough to strike him, or that, if he had struck him, I must inevitably have seen him. Upon this principle, which it is indeed pedantry to illustrate, because common sense obtrudes it upon the weakest, Mr. Warren will tell you POSITIVELY that Lord Thanet did *not* strike Rivett; and that, at the time when this violence is imputed to him, Mr. Fergusson, who is reported to have begun the affray, and who had, it seems, a stick wrenched from him, was in his place at the bar.

I will then call to you Mr. Maxwell, a gentleman of rank and fortune in Scotland, who lately married a daughter of Mr. Bouverie, member of Parliament for Northampton. He stood under the witness-box, which may be as in that corner (*pointing to a corner of the court*), commanding a full and near view of everything that could pass; and he will confirm, in every particular, the evidence of Mr. Warren, Mr. Bainbridge, and Mr. Smith. I will also call Mr. Whitbread, who attended the trial as a witness, who was near Mr. Sheridan, and, like him, did everything in his power to preserve the peace. Mr. Whitbread's situation I need hardly describe to you. He is a man of immense fortune, acquired most honourably

by his father in trade, and who possesses almost incalculable advantages, which are inseparably connected with the prosperity and security of his country; yet from the mouth of this most unexceptionable witness the most important parts of the evidence will receive the fullest confirmation. I shall also call Mr. Sheridan, who showed his disposition upon the occasion by his conduct, which was noticed and approved of by the Judges. This will furnish the defence of Lord Thanet and Mr. Fergusson.

As to Mr. O'Brien, it is almost injurious to his interests to consider him as at all affected by any part of the proof: he does not appear to have been at all connected with Mr. O'Connor. It has been said, indeed, that he proposed a bet to the officer on the existence of the warrant, and that he afterwards whispered Mr. O'Connor; but at that period it could not relate to an escape. It has been said, further, that he was on the spot, and that Mr. O'Connor put his hand on his shoulder. But that was no act of Mr. O'Brien's; he neither touched him, nor used any effort to assist him—no violence or obstruction is even imputed to him: even RIVETT HIMSELF has not attempted to say that, in his progress towards the prisoner, he was insulted by Mr. O'Brien, or that he even saw him.

I am not counsel for Mr. Thompson or Mr. Browne; but I apprehend I have a right to call them as witnesses, and upon that I shall presently take the Court's opinion. Rivett was desired to look round to identify Mr. Thompson, but pointed to another gentleman who sat next him, and who had no sort of resemblance to him in person. Mr. Thompson, therefore, is not touched by any part of the proof; and nobody has said a word concerning Mr. Browne (as I before remarked to you), except that there was a gentleman, in a grey coat with a black collar, who had the misfortune to have his head broken, and of which he made a complaint to the Court.

Gentlemen, I am now, therefore, very near relieving you from the painful duty which this important cause has imposed upon you—a cause which, independently of the Attorney-General's privilege to choose the form of trial, was well worthy of the attention of this high tribunal. So far from complaining of a trial at bar as an oppression of the defendants, I acknowledge the advantages they have received from it, not only in the superior learning and discrimination of the Court, but in the privilege of being tried by a jury of gentlemen assembled at a distance from all local prejudices, which has enabled them impartially to listen to both sides with such equal and such patient attention. I have yet another advantage from a trial in this place, which it is fit I should advert to. It enables me to remind the noble and learned Chief-Justice of a course of practice from which he has never deviated, and from whence my clients will receive most abundant advantage.

Throughout the numerous criminal trials which it has fallen to my lot to see his lordship judicially engaged in, I have observed

this uniform course. Where the decisions will not fit exactly the interest of the accused, and where counsel, as far as professional honour will warrant, are driven in argument to qualify them, and to divert their rigorous application, the noble lord summons up all the vigour of his mind, and fills up the full scope of his authority to prevent the violation of the law ; because the law is an abstract and universal rule of action, the application of which can suffer no modification. But when the *law* is clear, and the question only is, whether persons accused of a breach of it are guilty or not guilty upon *evidence*—above all, upon evidence which is contradictory—where testimony is opposed to testimony, and witness to witness, in such confounding equality as that a jury cannot with clearness arrive at the truth, I have a right to bring it to his lordship's own recollection, and, for his honour, to the recollection of others, that it has been his uniform practice, not merely to lean towards acquittal by his directions to juries, but even to interpose his opinion with the prosecuting counsel. In a civil case, indeed, where one man asserts that to be his right or property which his opponent controverts, a jury *must* give a verdict for the one or for the other, though the scales may appear to be equal. In such cases a judge is frequently obliged to lament to juries that they have a task imposed upon them which neither the conscience nor understanding of man can fulfil with satisfaction. But I speak the language of his lordship, and of all judges, when I say, that *between the public and individuals* THERE CAN BE NO SUCH RACE FOR JUDGMENT. Far different is the character of English justice ; and there occurs to my mind at this moment a recent and memorable example. While the attention of the House of Commons was attracted to the great cause of humanity, in its proceedings upon the abolition of the slave trade, a case was brought for the consideration of a jury, arising out of the ill-treatment of a negro in an African ship. The captain upon his oath denied the alleged cruelty, and a bill of indictment for perjury was found by a grand jury against him. I conducted that prosecution at Guildhall, and established the ill-treatment by several witnesses ; and although not one man who was in the ship at the time was called to contradict them, yet on its only coming out, not from their admission, but upon the evidence for the defendant, that they had held a different language in an alehouse at Bristol, Lord Kenyon interposed on my rising to reply for the Crown. I had myself no doubt of the guilt of the defendant ; but his lordship, though without even expressing that he himself entertained a different opinion, declared that the interests of the public never could be served by a conviction on such contradictory evidence. “ We ought not,” he said, “ with such materials, to leap in the dark to the conclusion of guilt.” I acquiesced, as it was my duty ; and the defendant, without any appeal to the jury on the evidence, was acquitted. I should only weary

you, gentlemen, by a repetition of similar instances which crowd into my memory at this moment. I am sure I could name above twenty, in this very place, upon proceedings for the obstruction of officers in the execution of their duty (proceedings most important to the public), where the evidence has been very contradictory, and where the noble and learned lord, not being able to detect perjury in the defence, has uniformly held this language to juries, and even to the counsel for prosecutions: "This is not a case for conviction; the defendant *may* be guilty, but there is not a sufficient preponderation in the evidence to pronounce a penal judgment."

These are the maxims, gentlemen, which have given to British courts of justice their value in the country and with mankind. These are the maxims which have placed a guard around them in the opinions and affections of the people, which, I admit, is at the same time the sting of this case, as it deeply enhances the guilt of him who would disturb the administration of such an admirable jurisprudence. But if the courts of England are, on this very account, so justly popular and estimable; if they have been, through ages after ages, the source of public glory and of private happiness, *why is this trial to furnish an exception?* For myself, I can only say that I wish to do my duty, and nothing beyond it. Govern us who will, I desire only to see my country prosperous, the laws faithfully administered, and the people happy and contented under them. Let England be secure, and I am sure no ambition of mine shall ever disturb her. I should rather say, if I were once disengaged from the duties which bind me to my profession—

"Oh! for a lodge in some vast wilderness,
Some boundless contiguity of shade,
Where rumour of oppression and deceit,
Of unsuccessful or successful war,
Might never reach me more!"

To conclude: If you think my clients, or any of them, guilty, you are bound to convict them; but if there shall be ultimately before you such a case, upon evidence, as to justify the observations I have made upon the probabilities of the transaction, which probabilities are only the results of every man's experience in his passage through the world; if you should think that the appearances were so much against them as to have justified honourable persons in describing, as they have done, their impressions at that moment, yet that the scene of confusion was such that you cannot arrive at a clear and substantial conclusion—you will acquit all the defendants.

At eleven o'clock at night the jury retired; and after being out about an hour, they returned with the following verdict:—

| | | |
|------------------------|---|--------------------|
| THE EARL OF THANET, | } | <i>Guilty.</i> |
| ROBERT FERGUSON, ESQ., | | |
| DENNIS O'BRIEN, ESQ., | | |
| | | <i>Not Guilty.</i> |

AFFIDAVITS of convicted Defendants, which the Court ordered to be filed, although they could not be received against the verdict of the Jury.

The defendant, the Earl of Thanet, maketh oath, and saith that he attended at the Special Commission held at Maidstone, in the county of Kent, for the trial of Arthur O'Connor, Esq., and others, for high treason, in consequence of a subpoena served upon him, to give evidence on behalf of the said Arthur O'Connor, and which was the sole cause of his attending at the said trial; and he saith, that after he had given his evidence, he retired from the court, and had no intention of returning thereto, till he was particularly pressed to be present to hear the defence of the counsel for the prisoners—merely as a matter of attention and countenance to the said Arthur O'Connor, who was his acquaintance; and he further saith, that at that time he had no knowledge whatever of the existence of any warrant against the said Arthur O'Connor, nor of any intention of securing his person, if he should be acquitted on the indictment. And this deponent further saith, that he sat in the place which Mr. Dallas had left, when he went to a more convenient one, for the purpose of addressing the jury; and that, whilst he was sitting there, he for the first time heard from Mr. Plumer that he had reason to believe there was a warrant to detain Mr. O'Connor; and this deponent further saith, that on the verdicts being pronounced, he stepped into the solicitors' seat to shake hands with Mr. O'Connor, which he did without even speaking to him, and without any other motive than that of congratulating him as a friend on his acquittal, at which time many others were coming to the same place where this deponent was; that upon a call for order and silence from the bench, or from one of the officers of the Court, he immediately sat down on the seat under that part of the dock where Mr. O'Connor stood, and at that period a slight confusion arose from several persons attempting to get towards Mr. O'Connor, one of whom said he had a warrant to apprehend him, for which he appeared to be reprimanded by the Honourable Sir Francis Buller in a few words, which this deponent did not distinctly hear. And this deponent further saith, that at the moment the Judge had passed sentence of death on O'Coigly, the most violent pushing began on the seat on which he sat (this deponent not observing that Mr. O'Connor was attempting to get away), and he continued sitting in his place till several persons on the same seat were struck, and amongst whom he believes was Mr. Gunter Browne, whom he never before or since had seen, to his knowledge; and from that moment this deponent began to feel the danger he was in, the tumult about him increasing so rapidly that he was unable to get over the railing before him; that, however, he stood up, and used

all the efforts in his power to go towards the Judges, as a place of safety; but he was instantly pushed down on the table, when a man, whom he has since found was John Rivett, struck at him several times with a stick, which blows he warded off as well as he was able with a small walking-stick, the said Rivett charging this deponent, as he struck at him, and striking him first, which this deponent denied, calling out at the same time as loud as he could that he had not struck him. And this deponent further saith, that he never did, during the said disturbance, any one act but what was strictly in the defence of his person, though he admits that he might have pushed several persons that pushed against him, to prevent his being thrown down, but that he did not lift hand or stick or use any violence whatsoever, to the said John Rivett, or any other person. And this deponent positively saith, that he was not privy to, or acquainted with, the existence of any warrant to detain the said Arthur O'Connor, until he heard of such warrant from Mr. Plumer, as before set forth; and that it never entered into his mind that it was to be served upon him in Court, until the person before mentioned called out that he had a warrant. And this deponent further saith, that the obstruction the officer met with, on the seat on which this deponent sat, was perfectly unintentional on his part, and solely owing to the unfortunate situation in which he had accidentally placed himself, as the seat was so narrow that it was with great difficulty any person could pass that way. And this deponent further saith, that he did nothing with intention to offend the Court, or any other person; but, on the contrary, he was violently attacked and assaulted; and that he retired from the scene of confusion as soon as he was able. And this deponent further saith, that he doth most solemnly upon his oath declare, that he had not consulted, concerted, or advised with any other person or persons whomsoever, to favour the escape of the said Arthur O'Connor, either by violence, or any other means whatsoever; and that he had no idea of doing it alone; and that he was not privy to the consultation or agreement of any other person or persons, either for the purpose of rescuing the said Arthur O'Connor out of the custody he then was in, or preventing the execution of any other warrant upon him.

THANET.

Sworn in Court the 3d of May 1799.

By the Court.

Robert Fergusson, of Lincoln's Inn, Esquire, one of the said defendants, maketh oath, and saith, that he was of counsel assigned by the Court for John Allen, one of the prisoners indicted with Arthur O'Connor for high treason, at a Special Session held at Maidstone in May last, and that as such counsel he was employed

in court during the whole of the day, in the night of which the riot charged in the information took place; he saith, that he neither knew, or had heard, of any fresh warrant against the said Arthur O'Connor, until the jury had gone to consider of their verdict, and very shortly before they returned to deliver it. And this deponent further saith, that he was in the place allotted to him as counsel when the jury returned into court with their verdict; and that about that time he complained to the Court of the interruption which was given to its proceedings by the violence of a person who was pressing forward between the prisoners and the Court; and that upon the complaint of this deponent Mr. Justice Buller ordered the said person to be quiet. And this deponent further saith, that from the time when the jury returned with their verdict until after sentence was pronounced, and the disturbance began, the said deponent remained in his place as counsel, and did not leave it until compelled by the violence of those who pressed upon him from the bench behind. And this deponent further saith, that when forced upon the table, he used no violence to any one, but used every means in his power to allay the ferment, and save the Earl of Thanet from the blows of John Rivett, without offering any violence to the said John Rivett. And this deponent further saith, that he had not, during any part of the disturbance, any stick, sword, or other weapon in his hand, and that he did not use or offer violence to any one. And this deponent further saith, that he neither attempted to rescue the said Arthur O'Connor, nor did he at any time agree with others to attempt such rescue, nor was he in any way aiding or assisting, nor did he at any time agree with others to aid or assist the said Arthur O'Connor, in any attempt to be made by him to escape.

ROBERT FERGUSSON.

Sworn in Court the 3^d day of *May* 1799.

By the Court.

On the 1st of June the Court gave judgment.

The Earl of Thanet was fined a thousand pounds, and imprisoned for a year in the Tower.

Mr. Fergusson an hundred pounds, and imprisoned for the same period in the King's Bench Prison.

SPEECH for JAMES HADFIELD, in the Court of King's Bench, on a trial at Bar, 26th of April 1800, on a charge of High Treason, for shooting at the King.

GENTLEMEN OF THE JURY,—The scene which we are engaged in, and the duty which I am not merely *privileged*, but *appointed*, by the authority of the Court to perform, exhibits to the whole civilised world a perpetual monument of our national justice.

The transaction, indeed, in every part of it, as it stands recorded in the evidence already before us, places our country and its government, and its inhabitants, upon the highest pinnacle of human elevation. It appears that, upon the 15th day of May last, his Majesty, after a reign of forty years, not merely in sovereign *power*, but spontaneously in the very hearts of his people, was openly shot at (or to all appearance shot at), in a public theatre in the centre of his capital, and amidst the loyal plaudits of his subjects, *yet not a hair of the head of the supposed assassin was touched*. In this unparalleled scene of calm forbearance, the King himself, though he stood first in personal interest and feeling, as well as in command, was a singular and fortunate example. The least appearance of emotion on the part of that august personage must unavoidably have produced a scene quite different, and far less honourable than the Court is now witnessing: but his Majesty remained unmoved, and the person *apparently* offending was only secured, without injury or reproach, for the business of this day.

Gentlemen, I agree with the Attorney-General (indeed, there can be no possible doubt), that if the same pistol had been maliciously fired by the prisoner in the same theatre at the meanest man within its walls, he would have been brought to *immediate* trial, and, if guilty, to immediate execution. He would have heard the charge against him for the first time when the indictment was read upon his arraignment. He would have been a stranger to the names and even to the existence of those who were to sit in judgment upon him, and of those who were to be the witnesses against him. But upon the charge of even this *murderous* attack upon the King himself, he is covered all over with the armour of the law. He has been provided with counsel by the King's own Judges, and not of *their* choice, but of *his own*. He has had a copy of the indictment ten days before this trial. He has had the names, descriptions, and abodes of all the jurors returned to the Court; and the highest

privilege of peremptory challenges derived from and safely directed by that indulgence. He has had the same description of every witness who could be received to accuse him. And there must at this hour be *twice* the testimony against him as would be legally competent to establish his guilt on a similar prosecution by the meanest and most helpless of mankind.

Gentlemen, when this melancholy catastrophe happened, and the prisoner was arraigned for trial, I remember to have said to some now present that it was, at first view, difficult to bring those indulgent exceptions to the general rules of trial within the principle which dictated them to our humane ancestors in cases of treasons against the political government or of *rebellious* conspiracy against the person of the king. In *these* cases, the passions and interests of great bodies of powerful men being engaged and agitated, a counterpoise became necessary to give composure and impartiality to criminal tribunals; but a *mere murderous* attack upon the King's person, not at all connected with his political character, seemed a case to be ranged and dealt with like a similar attack upon any private man.

But the wisdom of the law is greater than any man's wisdom—how much more, therefore, than mine! An attack upon the King is considered to be parricide against the State, and the jury and the witnesses, and even the Judges, are the children. It is fit, on that account, that there should be a solemn pause before we rush to judgment. And what can be a more sublime spectacle of justice than to see a statutable disqualification of a whole nation for a limited period, a fifteen days' quarantine before trial, lest the mind should be subject to the contagion of partial affections!*

From a prisoner so protected by the benevolence of our institutions, the utmost good faith would, on his part, be due to the public if he had consciousness and reason to reflect upon the obligation. The duty, therefore, devolves *on me*, and *upon my honour*, it shall be fulfilled. I will employ no artifices of speech. I claim only the strictest protection of the law for the unhappy man before you. I should, indeed, be ashamed if I were to say anything of the rule *in the abstract* by which he is to be judged, which I did not honestly feel; and I am sorry, therefore, that the subject is so difficult to handle with brevity and precision. Indeed, if it could be brought to a clear and simple criterion, which could admit of a dry admission or contradiction, there might be very little difference, *perhaps none at all*, between the Attorney-General and myself, upon the principles which ought to govern your verdict; but this is not possible, and I am, therefore, under the necessity of submitting to you, and to the Judges, for their direction (and at greater length than I wish), how I understand this difficult and momentous subject.

The law, as it regards this most unfortunate infirmity of the

* There must be fifteen days between arraignment and trial.

human mind, like the law in all its branches, aims at the utmost degree of precision ; but there are some subjects, as I have just observed to you, and the present is one of them, upon which it is extremely difficult to be precise. The general principle is clear, but the application is most difficult.

It is agreed by all jurists, and is established by the law of this and every other country, that it is the *reason of man* which makes him accountable for his actions ; and that the deprivation of reason acquits him of crime. This principle is indisputable ; yet so fearfully and wonderfully are we made, so infinitely subtle is the spiritual part of our being, so difficult is it to trace with accuracy the effect of diseased intellect upon human action, that I may appeal to all who hear me, whether there are any causes more difficult, or which, indeed, so often confound the learning of the Judges themselves, as when insanity, or the effects and consequences of insanity, become the subjects of legal consideration and judgment. I shall pursue the subject as the Attorney-General has properly discussed it. I shall consider insanity, as it annuls a man's dominion over property ; as it dissolves his contracts, and other acts, which otherwise would be binding ; and as it takes away his responsibility for crimes. If I could draw the line in a moment between these two views of the subject, I am sure the Judges will do me the justice to believe, that I would fairly and candidly do so ; but great difficulties press upon my mind, which oblige me to take a different course.

I agree with the Attorney-General, that the law, in neither civil nor criminal cases, will measure the degrees of men's understandings ; and that a *weak* man, however much below the ordinary standard of human intellect, is not only responsible for crimes, but is bound by his contracts, and may exercise dominion over his property. Sir Joseph Jekyll, in the Duchess of Cleveland's case, took the clear legal distinction, when he said, "The law will not measure the sizes of men's capacities, so as they be *compos mentis*."

Lord Coke, in speaking of the expression *non compos mentis*, says, "Many times, as here, the Latin word expresses the true sense, and calleth him not *amens*, *demens*, *furiosus*, *lunaticus*, *fatuus*, *stultus*, or the like, for *non compos mentis* is the most sure and legal." He then says, "*Non compos mentis* is of four sorts ; first, *ideota*, which, from his nativity, by a perpetual infirmity, is *non compos mentis* ; secondly, he that by sickness, grief, or other accident, wholly loses his memory and understanding ; third, a lunatic that hath sometimes his understanding, and sometimes not ; *aliquando gaudet lucidis intervallis* ; and therefore he is called *non compos mentis* so long as he hath not understanding."

But notwithstanding the precision with which this great author points out the different kinds of this unhappy malady, the nature of his work, in this part of it, did not open to any illustration which

it can now be useful to consider. In his fourth Institute he is more particular; but the admirable work of Lord Chief-Justice Hale, in which he refers to Lord Coke's Pleas of the Crown, renders all other authorities unnecessary.

Lord Hale says, "There is a partial insanity of mind, and a total insanity. The former is either in respect to things, *quoad hoc vel illud insanite*. Some persons, that have a competent use of reason in respect of some subjects, are yet under a particular dementia in respect of some particular discourses, subjects, or applications; or else it is partial in respect of degrees, and this is the condition of very many, especially melancholy persons, who for the most part discover their defect in excessive fears and griefs, and yet are not wholly destitute of the use of reason; and this partial insanity seems not to excuse them in the committing of any offence for its matter capital; for doubtless most persons, that are felons of themselves and others, are under a degree of partial insanity when they commit these offences. It is very difficult to define the invisible lines that divide perfect and partial insanity; but it must rest upon circumstances duly to be weighed and considered both by Judge and jury, lest on the one side there be a kind of inhumanity towards the defects of human nature; or, on the other side, too great an indulgence given to great crimes."

Nothing, gentlemen, can be more accurately nor more humanely expressed; but the application of the rule is often most difficult. I am bound, besides, to admit that there is a wide distinction between civil and criminal cases. If, in the former, a man appears, upon the evidence, to be *non compos mentis*, the law avoids his act, though it cannot be traced or connected with the morbid imagination which constitutes his disease, and which may be extremely partial in its influence upon conduct; but to deliver a man from responsibility for crimes—above all, for crimes of great atrocity and wickedness—I am by no means prepared to apply this rule, however well established, when property only is concerned.

In the very recent instance of Mr. Greenwood (which must be fresh in his lordship's recollection), the rule in civil cases was considered to be settled. That gentleman, whilst insane, took up an idea that a most affectionate brother had administered poison to him. Indeed, it was the prominent feature of his insanity. In a few months he recovered his senses. He returned to his profession as an advocate; was sound and eminent in his practice, and in all respects a most intelligent and useful member of society; but he could never dislodge from his mind the morbid delusion which disturbed it; and under the pressure, no doubt, of that diseased prepossession, he disinherited his brother. The cause to avoid this will be tried here. We are not now upon the evidence, but upon the principle adopted as the law. The noble and learned Judge, who presides upon this trial, and who presided upon that, told the jury,

that if they believed Mr. Greenwood, when he made the will, to have been *insane*, the will could not be supported, whether it had disinherited his brother or not; that the act, no doubt, strongly confirmed the existence of the false idea which, if believed by the jury to amount to *madness*, would equally have effected his testament, if the brother, instead of being disinherited, had been in his grave; and that, on the other hand, if the unfounded notion did not amount to madness, its influence could not vacate the devise.* This principle of law appears to be sound and reasonable, as it applies to civil cases, from the extreme difficulty of tracing with precision the secret motions of a mind deprived by disease of its soundness and strength.

Whenever, therefore, a person may be considered *non compos mentis*, all his *civil* acts are void, whether they can be referred, or not, to the morbid impulse of his malady, or even though, to all *visible appearances*, totally separated from it; but I agree with Mr. Justice Tracey, that it is not every man of an idle, frantic appearance and behaviour, who is to be considered as a lunatic, either as it regards obligations or crimes; but that he must appear to the jury to be *non compos mentis*, in the legal acceptance of the term; and that, not at any *anterior period*, which can have no bearing upon any case whatsoever, but at the *moment* when the contract was entered into, or the crime committed.

The Attorney-General, standing undoubtedly upon the most revered authorities of the law, has laid it down, that to protect a man from *criminal responsibility*, there must be a *total deprivation of memory and understanding*. I admit that this is the very expression used, both by Lord Coke and by Lord Hale; but the true interpretation of it deserves the utmost attention and consideration of the Court. If a *total deprivation of memory* was intended by these great lawyers to be taken in the *literal* sense of the words—if it was meant, that, to protect a man from punishment, he must be in such a state of prostrated intellect, as not to know his name, nor his condition, nor his relation towards others—that if a husband, he should not know he was married; or, if a father, could not remember that he had children, nor know the road to his house, nor his property in it—then no such madness ever existed in the world. It is *IDIOTCY* alone which places a man in this helpless condition; where, from an *original* mal-organisation, there is the human frame alone without the human capacity; and which, indeed, meets the very definition of Lord Hale himself, when, referring to Fitzherbert, he says: “Idiocy or fatuity *à nativitate, vel dementia naturalis*, is such a one as described by Fitzherbert, who knows not to tell twenty shillings, nor knows his own age, or who was his father.” But in all the cases which have filled Westminster Hall with the most complicated considerations, the lunatics, and other insane

* *N.B.* The jury found for the will; but, after a contrary verdict in the Common Pleas, a compromise took place.

persons who have been the subjects of them, have not only had memory, *in my sense of the expression*—they have not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but have, in general, been remarkable for subtlety and acuteness. Defects in their reasonings have seldom been traceable—the disease consisting in the delusive sources of thought—all their deductions within the scope of the malady, being founded upon the *immovable* assumption of matters as *realities*, either without any foundation whatsoever, or so distorted and disfigured by fancy as to be almost nearly the same thing as their creation. It is true, indeed, that in some, perhaps in many cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of frenzy. These unhappy sufferers, however, are not so much considered by physicians as maniacs, but to be in a state of delirium as from fever. There, indeed, all the ideas are overwhelmed—for reason is not merely disturbed, *but driven wholly from her seat*. Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects; or, at least, are wholly incapable of considering their relations. Such persons, *and such persons alone* (except idiots), *are wholly deprived of their UNDERSTANDINGS*, in the Attorney-General's seeming sense of that expression. But these cases are not only extremely rare, but never can become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases, reason is not driven from her seat, but distraction sits down upon it along with her—holds her, trembling, upon it, and frightens her from her propriety. Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the place of realities, as not to be dislodged and shaken by the organs of perception and sense. In such cases the images frequently vary, but in the same subject are generally of the same terrific character. Here, too, no judicial difficulties can present themselves; for who could balance upon the judgment to be pronounced in cases of such extreme disease? Another class, branching out into almost infinite subdivisions, under which, indeed, the former, and every case of insanity, may be classed, is where the delusions are not of that frightful character, but infinitely various, and often extremely *circumscribed*; yet where imagination (*within the bounds of the malady*) still holds the most uncontrollable dominion over reality and fact. *And these are the cases which frequently mock the wisdom of the wisest in judicial trials*; because such persons often reason with a subtlety which puts in the shade the ordinary conceptions of mankind; their conclusions are just, and frequently profound; but the *premises from which they reason*, WHEN WITHIN THE RANGE OF THE MALADY, are uniformly false—not false from any defect of knowledge or judgment, but because a delusive image, the in-

separable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance, because unconscious of attack.

Delusion, therefore, where there is no frenzy or raving madness, is the true character of insanity; and where it cannot be predicated of a man standing for life or death for a crime, he ought not, in my opinion, to be acquitted; and if courts of law were to be governed by any other principle, every departure from sober, rational conduct would be an emancipation from criminal justice. I shall place my claim to your verdict upon no such dangerous foundation. I must convince you, not only that the unhappy prisoner was a lunatic, within my own definition of lunacy, but that the act in question was the IMMEDIATE, UNQUALIFIED OFFSPRING OF THE DISEASE. In *civil* cases, as I have already said, the law avoids every act of the lunatic during the period of the lunacy; although the delusion may be extremely circumscribed; although the mind may be quite sound in all that is not within the shades of the very partial eclipse; and although the act to be avoided can in no way be connected with the influence of the insanity. But to deliver a lunatic from responsibility to *criminal* justice, above all, in a case of such atrocity as the present, the relation between the disease and the act should be apparent. Where the connection is doubtful, the judgment should certainly be most indulgent, from the great difficulty of diving into the secret sources of a disordered mind; but still, I think, that, as a doctrine of law, the delusion and the act should be connected.

You perceive, therefore, gentlemen, that the prisoner, in naming me for his counsel, has not obtained the assistance of a person who is disposed to carry the doctrine of insanity in his defence so far as even the books would warrant me in carrying it. Some of the cases—that of Lord Ferrers, for instance—which I shall consider hereafter, distinguished from the present, would not, in my mind, bear the shadow of an argument as a defence against an indictment for murder. I cannot allow the protection of insanity to a man who only exhibits violent passions and malignant resentments, acting upon *real circumstances*; who is impelled to evil from no morbid delusions, but who proceeds upon the ordinary perceptions of the mind. I cannot consider such a man as falling within the protection which the law gives, and is bound to give, to those whom it has pleased God, for mysterious causes, to visit with this most afflicting calamity.

He alone can be so emancipated, whose disease (call it what you will) consists, not merely in seeing with a prejudiced eye, or with odd and absurd particularities, differing in many respects from the contemplations of sober sense, upon the actual existences of things; but, *he only* whose whole reasoning and corresponding conduct, though governed by the ordinary dictates of reason, proceed upon something which has no foundation or existence.

Gentlemen, it has pleased God so to visit the unhappy man before you ; to shake his reason in its citadel ; to cause him to build up as realities the most impossible phantoms of the mind, and to be impelled by them as motives *irresistible* ; the whole fabric being nothing but the unhappy vision of his disease—existing nowhere else—having no foundation whatsoever in the very nature of things.

Gentlemen, it has been stated by the Attorney-General, and established by evidence, which I am in no condition to contradict, nor have, indeed, any interest in contradicting, that when the prisoner bought the pistol which he discharged at, or *towards* his Majesty, he was well acquainted with the nature and use of it ; that, as a soldier, he could not but know that in his hands it was a sure instrument of death ; that, when he bought the gunpowder, he knew it would prepare the pistol for its use ; that, when he went to the playhouse, he knew he was going there, and everything connected with the scene as perfectly as any other person. I freely admit all this : I admit, also, that every person who listened to his conversation, and observed his deportment upon his apprehension, must have given precisely the evidence delivered by his Royal Highness the Duke of York ; and that nothing like insanity appeared to those who examined him. But what then ? I conceive, gentlemen, that I am more in the habit of examination than either that illustrious person, or the witnesses from whom you have heard this account ; yet I well remember (indeed, I never can forget it), that since the noble and learned Judge has presided in this Court, I examined, for the greater part of a day, in this very place, an unfortunate gentleman who had indicted a most affectionate brother, together with the keeper of a mad-house at Hoxton, for having imprisoned him as a lunatic ; whilst, according to his evidence, he was in his perfect senses. I was, unfortunately, not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact ; but, not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe that I left no means unemployed which long experience dictated ; but without the smallest effect. The day was wasted, and the prosecutor, by the most affecting history of unmerited suffering, appeared to the Judge and jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression. At last Dr. Sims came into court—who had been prevented by business from an earlier attendance, and whose name, by the by, I observe to-day in the list of the witnesses for the Crown. From Dr. Sims I soon learned that the very man whom I had been above an hour examining, and with every possible effort which counsel are so much in the habit of exerting, believed himself to be *the Lord and Saviour of mankind* ; not merely *at the time of his confinement*—which was alone necessary for my defence—but *during the whole time that he had been triumphing over every attempt to surprise*

him in the concealment of his disease. I then affected to lament the indecency of my ignorant examination, when he expressed his forgiveness, and said, with the utmost gravity and emphasis, in the face of the whole Court, "I AM THE CHRIST;" and so the cause ended. Gentlemen, this is not the only instance of the power of concealing this malady; I could consume the day if I were to enumerate them; but there is one so extremely remarkable, that I cannot help stating it.

Being engaged to attend the Assizes at Chester upon a question of lunacy, and having been told that there had been a memorable case tried before Lord Mansfield in this place, I was anxious to procure a report of it; and from that great man himself (who within these walls will ever be revered, being then retired in his extreme old age to his seat near London, in my own neighbourhood), I obtained the following account of it: "A man of the name of Wood," said Lord Mansfield, "had indicted Dr. Munro for keeping him as a prisoner (I believe in the same mad-house at Hoxton), when he was sane. He underwent the most severe examination by the defendant's counsel without exposing his complaint; but Dr. Battye, having come upon the bench by me, and having desired me to ask him what was become of the princess whom he had corresponded with in cherry-juice, he showed in a moment what he was. He answered that there was nothing at all in that, because, having been (as everybody knew), imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry-juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat. There existed, of course, no tower, no imprisonment, no writing in cherry-juice, no river, no boat; but the whole the inveterate phantom of a morbid imagination. I immediately," continued Lord Mansfield, "directed Dr. Munro to be acquitted; but this man Wood, being a merchant in Philpot Lane, and having been carried through the city in his way to the mad-house, he indicted Dr. Munro over again for the trespass and imprisonment in London, knowing that he had lost his cause by speaking of the princess at Westminster; and such," said Lord Mansfield, "is the extraordinary subtlety and cunning of madmen, that when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the bar, and all the authority of the Court, could not make him say a single syllable upon that topic, which had put an end to the indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him; but, conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back."*

* This evidence at Westminster was then proved against him by the short-hand writer.

Now, gentlemen, let us look to the application of these cases. I am not examining, *for the present*, whether either of these persons ought to have been acquitted, *if they had stood in the place of the prisoner now before you*; that is quite a distinct consideration, which we shall come to hereafter. The direct application of them is *only this*—that if I bring before you such evidence of the prisoner's insanity as, *if believed to have really existed*, shall in the opinion of the Court, as the rule for your verdict in point of law, be sufficient for his deliverance, then that you ought not to be shaken in giving full credit to such evidence, notwithstanding the report of those who were present at his apprehension, *who describe him as discovering no symptom whatever of mental incapacity or disorder*; because I have shown you that insane persons frequently appear in the utmost state of ability and composure, even in the highest paroxysms of insanity, except when frenzy is the characteristic of the disease. In this respect, the cases I have cited to you have the most *decided application*; because they apply to the overthrow of the whole of the evidence (admitting at the same time the truth of it), by which the prisoner's case can alone be encountered.

But it is said that, whatever delusions may overshadow the mind, every person ought to be responsible for crimes, *who has the knowledge of good and evil*. I think I can presently convince you that there is something too general in this mode of considering the subject; and you do not, therefore, find any such proposition in the language of the celebrated writer alluded to by the Attorney-General in his speech. Let me suppose that the character of an insane delusion consisted in the belief that some given person was any brute animal, or an inanimate being (and such cases have existed), and that, upon the trial of such a lunatic for murder, you firmly, upon your oaths, were convinced, upon the uncontradicted evidence of an hundred persons, that he believed the man he had destroyed to have been a potter's vessel; that it was quite impossible to doubt that fact, *although to all other intents and purposes he was sane*—conversing, reasoning, and acting as men not in any manner tainted with insanity, converse, and reason, and conduct themselves. Suppose further, that he believed the man whom he destroyed, but whom he destroyed as a potter's vessel, to be the property of another; and that he had malice against such supposed person, and that he meant to injure him, knowing the act he was doing to be malicious and injurious, and that, in short, he had full knowledge of all the principles of good and evil; yet would it be possible to convict such a person of murder, if, from the influence of his disease, he was ignorant of the relation he stood in to the man he had destroyed, and was utterly *unconscious* that he had struck at the life of a human being? I only put this case—and many others might be brought as examples—to illustrate that the knowledge of good and evil is too general a description.

I really think, however, that the Attorney-General and myself do not, in substance, very materially differ; because from the whole of his most able speech, taken together, his meaning may, I think, be thus collected: that where the act which is criminal is done under the dominion of malicious mischief and wicked intention, although such insanity might exist in a corner of the mind, as might avoid the acts of the delinquent as a lunatic in a civil case, yet that he ought not to be protected if malicious mischief, and not insanity, had impelled him to the act for which he was criminally to answer; because, in such a case, the act might be justly ascribed to malignant motives, and not to the dominion of disease. I am not disposed to dispute such a proposition in a case which would apply to it, and I can well conceive such cases may exist. The question, therefore, which you will have to try is this: Whether, when this unhappy man discharged the pistol in a direction which convinced, and ought to convince every person that it was pointed at the person of the King, he meditated mischief and violence to his Majesty, or whether he came to the theatre (*which it is my purpose to establish*) under the dominion of the most melancholy insanity that ever degraded and overpowered the faculties of man. I admit that when he bought the pistol, and the gunpowder to load it, and when he loaded it, and came with it to the theatre, and lastly, when he discharged it, every one of these acts would be overt acts of compassing the King's death, if at all or *any* of these periods he was actuated by that *mind and intention* which would have constituted murder in the case of an individual, if the individual had been actually killed. I admit also that the mischievous, and, in this case, the traitorous intention, must be inferred from all these acts, unless *I can rebut the inferences by proof*. If I were to fire a pistol *towards* you, gentlemen, where you are now sitting, the act would undoubtedly infer the malice. *The whole proof, therefore, is undoubtedly cast upon ME.*

In every case of treason or murder, which are precisely the same, except that the unconsummated intention in the case of the King is the same as the actual murder of a private man, the jury must impute to the person whom they condemn by their verdict *the motive* which constitutes the crime; and your province to-day will, therefore, be to decide whether the prisoner, when he did the act, was under the uncontrollable dominion of insanity, and was impelled to it by a *morbid delusion*; or whether it was the act of a man who, though occasionally mad, or even at the time not perfectly collected, was yet not actuated by the disease, but by the suggestion of a wicked and malignant disposition.

I admit therefore, freely, that if, after you have heard the evidence which I hasten to lay before you, of the state of the prisoner's mind, and close up to the very time of this catastrophe, you shall still not feel yourselves clearly justified in negativing the

wicked motives imputed by this indictment, I shall leave you in the hands of the learned Judges to declare to you the law of the land, and shall not seek to place society in a state of uncertainty by any appeal addressed only to your compassion. I am appointed by the Court to claim for the prisoner the full protection of the law, but not to misrepresent it in his protection.

Gentlemen, the facts of this melancholy case lie within a narrow compass.

The unfortunate person before you was a soldier. He became so, I believe, in the year 1793, and is now about twenty-nine years of age. He served in Flanders under the Duke of York, as appears by his Royal Highness's evidence, and being a most approved soldier, he was one of those singled out as an orderly man to attend upon the person of the Commander-in-Chief. You have been witnesses, gentlemen, to the calmness with which the prisoner has sitted in his place during the trial. There was but one exception to it. You saw the emotion which overpowered him when the illustrious person now in Court took his seat upon the bench. Can you then believe, from the evidence, for I do not ask you to judge as physiognomists, or to give the rein to compassionate fancy; but can there be any doubt that it was the generous emotion of the mind on seeing the prince under whom he had served with so much bravery and honour? Every man certainly must judge for himself. I am counsel, not a witness, in the cause; but it is a most striking circumstance, when you find from the Crown's evidence, that when he was dragged through the orchestra under the stage, and charged with an act for which he considered his life as forfeited, he addressed the Duke of York with the same enthusiasm which has marked the demeanour I am adverting to. Mr. Richardson, who showed no disposition in his evidence to help the prisoner, but who spoke with the calmness and circumspection of truth, and who had no idea that the person he was examining was a lunatic, has given you the account of the burst of affection on his first seeing the Duke of York, against whose father and sovereign he was supposed to have had the consciousness of treason. The king himself, whom he was supposed to have so malignantly attacked, never had a more gallant, loyal, or suffering soldier. His gallantry and loyalty will be proved, his sufferings speak for themselves.

About five miles from Lisle, upon the attack made on the British army, this unfortunate soldier was in the 15th Light Dragoons, in the thickest of the ranks, exposing his life for his prince, whom he is supposed to-day to have sought to murder. The first wound he received is most materially connected with the subject we are considering; you may see the effect of it now.* The point of a sword was impelled against him with all the force of a man urging his

* Mr. Erskine put his hand to the prisoner's head who stood by him at the bar of the Court.

horse in battle. When the Court put the prisoner under my protection, I thought it my duty to bring Mr. Cline to inspect him in Newgate, and it will appear by the evidence of that excellent and conscientious person, who is known to be one of the first anatomists in the world, that from this wound one of two things must have happened; either that, by the immediate operation of surgery, the displaced part of the skull must have been taken away, or been forced inward on the brain. The second stroke also speaks for itself, you may now see its effects. (Here Mr. Erskine touched the head of the prisoner.) He was cut across all the nerves which give sensibility and animation to the body, and his head hung down almost dissevered, until by the act of surgery it was placed in the position you now see it. But thus almost destroyed he still recollected his duty, and continued to maintain the glory of his country when a sword divided the membrane of his neck where it terminates in the head, yet he still kept his place though his helmet had been thrown off by the blow which I secondly described, when by another sword he was cut into the very brain. You may now see its menbrane uncovered. Mr. Cline will tell you that he examined these wounds, and he can better describe them. I have myself seen them, but am no surgeon. From his evidence you will have to consider their consequences. It may be said that many soldiers receive grievous wounds without their producing insanity. So they may, undoubtedly, but we are here upon *the fact*. There was a discussion the other day, on whether a man, who had been seemingly hurt by a fall beyond remedy, could get up and walk; the people around said it was impossible, but he did get up and walk, and so there was an end to the impossibility. The effects of the prisoner's wounds were known by the *immediate* event of insanity, and Mr. Cline will tell you that it would have been strange indeed if any other event had followed. We are not here upon a case of insanity arising from the spiritual part of man, as it may be affected by hereditary taint, by intemperance, or by violent passions, the operations of which are various and uncertain; but we have to deal with a species of insanity more resembling what has been described as idiocy, proceeding from original mal-organisation. *There* the disease is, from its very nature, *incurable*; and so where a man (like the prisoner) has become insane from *violence to the brain, which permanently affects its structure*, however such a man may appear occasionally to others, his disease is *immovable*; and if the prisoner, therefore, were to live a thousand years, he *never* could recover from the consequence of that day.

But this is not all. Another blow was still aimed at him, which he held up his arm to avoid, when his hand was cut into the bone. It is an afflicting subject, gentlemen, and better to be spoken of by those who understand it; and to end all further description, he was

then thrust almost through and through the body with a bayonet, and left in a ditch amongst the slain.

He was afterwards carried to an hospital, where he was known by his tongue to one of his countrymen, who will be examined as a witness, who found him, not merely as a wounded soldier deprived of the powers of his body, but bereft of his senses for ever.

He was affected from the very beginning with that species of madness, which from violent agitation fills the mind with the most inconceivable imaginations, wholly unfitting it for all dealing with human affairs according to the sober estimate and standard of reason. He imagined that he had constant intercourse with the Almighty Author of all things; that the world was coming to a conclusion, and that, like our blessed Saviour, he was to sacrifice himself for its salvation; and so obstinately did this morbid image continue, that you will be convinced he went to the theatre to perform, as he imagined, that blessed sacrifice, and because he would not be guilty of suicide, though called upon by the imperious voice of Heaven, he wished that by the appearance of crime his life might be taken away from him by others. This bewildered, extravagant species of madness appeared immediately after his wounds on his first entering the hospital, and on the very same account he was discharged from the army on his return to England, which the Attorney-General very honourably and candidly seemed to intimate.

To proceed with the proofs of his insanity *down to the very period of his supposed guilt*. This unfortunate man before you is the father of an infant of eight months, and I have no doubt that if the boy had been brought into Court (but this is a grave place for the consideration of justice, and not a theatre for stage effect)—I say, I have no doubt whatever, that if this poor infant had been brought into Court, you would have seen the unhappy father wrung with all the emotions of parental affection: yet, upon the Tuesday preceding the Thursday when he went to the play-house, you will find his disease still urging him forward, with the impression *that the time was come*, when he must be destroyed for the benefit of mankind; and in the confusion, or rather *delirium* of this wild conception, he came to the bed of the mother, who had this infant in her arms, and endeavoured to dash out its brains against the wall. The family was alarmed, and the neighbours being called in, the child was with difficulty rescued from the unhappy parent, who in his madness would have destroyed it.

Now, let me for a moment suppose that he had succeeded in the accomplishment of his insane purpose, and the question had been whether he was guilty of murder. Surely the affection for this infant up to the very moment of his distracted violence would have been conclusive in his favour, but not more so than his

loyalty to the King, and his attachment to the Duke of York, as applicable to the case before us; yet at that very period, even of extreme distraction, he conversed as rationally on all other subjects, as he did to the Duke of York at the theatre. The prisoner knew perfectly that he was the husband of the woman, and the father of the child; the tears of affection ran down his face at the very moment that he was about to accomplish its destruction, but during the whole of this scene of horror, he was not at all deprived of memory, in the Attorney-General's sense of the expression. He could have communicated at that moment every circumstance of his past life, and everything connected with his present condition, *except only the quality of the act he was meditating*. In that, he was under the overruling dominion of a morbid imagination, and conceived that he was acting against the dictates of nature, in obedience to the superior commands of Heaven, which had told him that the moment he was dead, and the infant with him, all nature was to be changed, and all mankind were to be redeemed by his dissolution. There was not an idea in his mind, from the beginning to the end, of the destruction of the King; on the contrary, he always maintained his loyalty—lamented that he could not go again to fight his battles in the field—and it will be proved that only a few days before the period in question, being present when a song was sung indecent, as it regarded the person and condition of his Majesty, he left the room with loud expressions of indignation, and immediately sung, "God save the King," with all the enthusiasm of an old soldier who had bled in the service of his country.

I confess to you, gentlemen, that this last circumstance, which may to some appear insignificant, is, in my mind, most momentous testimony, because if this man had been in the habit of associating with persons inimical to the government of our country, so that mischief might have been fairly argued to have mixed itself with madness (which, by the by, it frequently does), if it could in any way have been collected, that from his disorder, more easily inflamed and worked upon, he had been led away by disaffected persons to become the instrument of wickedness; if it could have been established that such had been his companions and his habits, I should have been ashamed to lift up my voice in his defence. I should have felt, that, however his mind might have been weak and disordered, yet if his understanding sufficiently existed, to be methodically acted upon as an instrument of malice, I could not have asked for an acquittal; but you find, on the contrary, in the case before you, that notwithstanding the opportunity which the Crown has had, and which, upon all such occasions, it justly employs to detect treason, either against the person of the King, or against his Government, *not one witness* has been able to fix upon the prisoner before you, any one companion of even a doubtful description, or any one

expression from which disloyalty could be inferred, whilst the whole history of his life repels the imputation. His courage in defence of the King and his dominions, and his affection for his son, in such unanswerable evidence, all speak aloud against the presumption that he went to the theatre with a mischievous intention.

To recur again to the evidence of Mr. Richardson, who delivered most honourable and impartial testimony, I certainly am obliged to admit that what a prisoner says for himself when coupled at the very time with an overt act of wickedness, is no evidence whatever to alter the obvious quality of the act he has committed. If, for instance, I who am now addressing you had fired the same pistol towards the box of the King—and, having been dragged under the orchestra, and secured for criminal justice, I had said that I had no intention to kill the King, but was weary of my life, and meant to be condemned as guilty, would any man who was not himself insane consider that as a defence? Certainly not; because it would be without the whole foundation of the prisoner's previous condition—part of which it is even difficult to apply closely and directly by strict evidence, without taking his undoubted insanity into consideration; because it is his unquestionable insanity which alone stamps the effusions of his mind with sincerity and truth.

The idea which had impressed itself, but in most confused images, upon this unfortunate man was, *that he must be destroyed, but ought not to destroy himself*. He once had the idea of firing over the King's carriage in the street; but then he imagined he should be immediately killed, which was not the mode of propitiation for the world. And as our Saviour, before His passion, had gone into the garden to pray, this fallen and afflicted being, after he had taken the infant out of bed to destroy it, returned also to the garden, saying, as he afterwards said to the Duke of York, "that all was not over—that a great work was to be finished;" and there he remained in prayer, the victim of the same melancholy visitation.

Gentlemen, these are the facts, freed from even the possibility of artifice or disguise; because the testimony to support them will be beyond all doubt. And in contemplating the law of the country, and the precedents of its justice, to which they must be applied, I find nothing to challenge or question—I approve of them throughout—I subscribe to all that is written by Lord Hale—I agree with all the authorities cited by the Attorney-General, from Lord Coke; but, above all, I do most cordially agree in the instance of convictions by which he illustrated them in his able address. I have now lying before me the case of Earl Ferrers. Unquestionably there could not be a shadow of doubt, and none appears to have been entertained, of his guilt. I wish, indeed, nothing more than to contrast the two cases; and so far am I from disputing either the principle of that condemnation, or the evidence that was the foundation of it, that I invite you to examine whether any two instances

in the whole body of the criminal law are more diametrically opposite to each other than the case of Earl Ferrers and that now before you. Lord Ferrers was divorced from his wife by Act of Parliament; and a person of the name of Johnson, who had been his steward, had taken part with the lady in that proceeding, and had conducted the business in carrying the Act through the two Houses. Lord Ferrers, consequently, wished to turn him out of a farm which he occupied under him; but his estate being in trust, Johnson was supported by the trustees in his possession. There were also some differences respecting coal-mines; and in consequence of both transactions Lord Ferrers took up the most violent resentment against him. Let me here observe, gentlemen, that this was not a resentment founded upon any *illusion*—not a resentment forced upon a distempered mind by fallacious images, but depending upon *actual circumstances and real facts*; and, acting like any other man under the influence of malignant passions, he repeatedly declared that he would be revenged on Mr. Johnson, particularly for the part he had taken in depriving him of a contract respecting the mines.

Now, suppose Lord Ferrers could have showed that no difference with Mr. Johnson had ever existed regarding his wife at all; that Mr. Johnson had never been his steward; and that he had only, from delusion, believed so, when his situation in life was quite different. Suppose, further, that an *illusive imagination* had alone suggested to him that he had been thwarted by Johnson in his contract for these coal-mines, there never having been any contract at all for coal-mines; in short, that the whole basis of his enmity was without any foundation in nature, and had been shown to have been a *morbid image* imperiously fastened upon his mind. Such a case as that would have exhibited a character of insanity in Lord Ferrers extremely different from that in which it was presented by the evidence to *his peers*. Before *them* he only appeared as a man of turbulent passions; whose mind was disturbed by no fallacious images of things without existence; whose quarrel with Johnson was founded upon *no illusions*, but upon existing facts; and whose resentment proceeded to the fatal consummation with all the ordinary indications of mischief and malice; and who conducted his own defence with the greatest dexterity and skill. *Who, then, could doubt that Lord Ferrers was a murderer?* When the act was done, he said, "I am glad I have done it. He was a villain, and I am revenged." But when he afterwards saw that the wound was probably mortal, and that it involved consequences fatal to himself, he desired the surgeon to take all possible care of his patient, and, conscious of his crime, kept at bay the men who came with arms to arrest him; showing from the beginning to the end nothing that does not generally accompany the crime for which he was condemned. He was proved, to be sure, to be a man subject to unreasonable pre-

judices, addicted to absurd practices, and agitated by violent passions; but the act was not done under the dominion of uncontrollable disease; and whether the mischief and malice were substantive or marked in the mind of a man whose passions bordered upon, or even amounted to insanity, it did not convince the lords that, under all the circumstances of the case, he was not a fit object of criminal justice.

In the same manner Arnold, who shot at Lord Onslow, and who was tried at Kingston soon after the Black Act passed on the accession of George the First. Lord Onslow having been very vigilant as a magistrate in suppressing clubs which were supposed to have been set on foot to disturb the new Government, Arnold had frequently been heard to declare that Lord Onslow would ruin his country; and although he appeared from the evidence to be a man of most wild and turbulent manners, yet the people round Guildford, who knew him, did not in general consider him to be insane. His counsel could not show that any morbid *delusion* had ever overshadowed his understanding. They could not show, *as I shall*, that just before he shot at Lord Onslow he had endeavoured to destroy his own beloved child. It was a case of *human resentment*.

I might instance, also, the case of Oliver, who was indicted for the murder of Mr. Wood, a potter, in Staffordshire. Mr. Wood had refused his daughter to this man in marriage. My friend Mr. Milles was counsel for him at the assizes. He had been employed as a surgeon and apothecary by the father, who forbade him his house, and desired him to bring in his bill for payment. When in the agony of disappointment, and brooding over the injury he had suffered, on his being admitted to Mr. Wood to receive payment, he shot him upon the spot. The trial occupied great part of the day; yet, for my own part, I cannot conceive that there was anything in the case for a jury to deliberate on. He was a man acting upon *existing facts*, and upon *human resentments* connected with them. He was at the very time carrying on his business, which required learning and reflection, and, indeed, a reach of mind beyond the ordinary standard, being trusted by all who knew him as a practiser in medicine. Neither did he go to Mr. Wood's under the influence of *illusion*; but he went to destroy the life of a man who was placed exactly in the circumstances which the mind of the criminal represented him. He went to execute vengeance on him for refusing his daughter. In such a case there might, no doubt, be passion approaching to frenzy; but there wanted that characteristic of madness to emancipate him from criminal justice.

There was another instance of this description in the case of a most unhappy woman who was tried in Essex for the murder of Mr. Errington, who had seduced and abandoned her and the children she had borne to him. It must be a consolation to those who prosecuted her that she was acquitted, as she is at this time in a

most undoubted and deplorable state of insanity. But I confess if I had been upon the jury who tried her I should have entertained great doubts and difficulties ; for although the unhappy woman had before exhibited strong marks of insanity arising from grief and disappointment ; yet she acted upon *facts and circumstances* which had an *existence*, and which were calculated, upon the ordinary principles of human action, to produce the most violent resentment. Mr. Errington having just cast her off, and married another woman, or taken her under his protection, her jealousy was excited to such a pitch as occasionally to overpower her understanding ; but when she went to Mr. Errington's house, where she shot him, she went with the express and deliberate purpose of shooting him. That fact was unquestionable. She went there with a resentment long rankling in her bosom, bottomed on an existing foundation : she did not act under a *delusion that he had deserted her* when he had not, but took revenge upon him for an actual desertion ; but still the jury, in the humane consideration of her sufferings, pronounced the insanity to be predominant over resentment, and they acquitted her.

But let me suppose (which would liken it to the case before us), that she had never cohabited with Mr. Errington ; that she never had had children by him ; and, consequently, that he neither had, nor could possibly have, deserted or injured her. Let me suppose, in short, that she had never seen him in her life, but that her resentment had been founded on the morbid delusion that Mr. Errington, who had never seen her, had been the author of all her wrongs and sorrows ; and that under that *diseased* impression she had shot him. If that had been the case, gentlemen, she would have been acquitted upon the opening, and no judge would have sat to try such a cause. The *act itself* would have been decisively characteristic of madness, because, being founded upon nothing existing, it could not have proceeded from malice, which the law requires to be charged and proved in every case of murder, as the foundation of a conviction.

Let us now recur to the cause we are engaged in, and examine it upon those principles by which I am ready to stand or fall in the judgment of the Court.

You have a man before you who will appear upon the evidence to have received those almost deadly wounds which I described to you, producing the immediate and immovable effects which the eminent surgeon whose name I have mentioned will prove that they could not but have produced. It will appear that from that period he was visited with the severest paroxysms of madness, and was repeatedly confined with all the coercion which it is necessary to practise upon lunatics—yet, what is quite decisive against the imputation of treason against the person of the King, his loyalty never forsook him. Sane or insane, it was his very characteristic to love his sovereign and his country, although the delusions which dis-

tracted him were sometimes, *in other respects*, as contradictory as they were violent.

Of this inconsistency there was a most striking instance only on the Tuesday before the Thursday in question, when it will be proved that he went to see one Truelet, who had been committed by the Duke of Portland as a lunatic. This man had taken up an idea that our Saviour's second advent, and the dissolution of all human things, were at hand; and conversed in this strain of madness. This mixing itself with the insane delusion of the prisoner, he immediately broke out upon the subject of his own propitiation and sacrifice for mankind, although only the day before he had exclaimed, that the Virgin Mary was a whore; that Christ was a bastard; that God was a thief; and that he and this Truelet were to live with Him at White Conduit House, and there to be enthroned together. His mind, in short, was overpowered and overwhelmed with distraction.

The charge against the prisoner is the overt act of compassing the death of the King, in firing a pistol at his Majesty—an act which only differs from murder inasmuch as the bare compassing is equal to the accomplishment of the malignant purpose; and it will be *your* office, under the advice of the Judge, to decide by your verdict to which of the two impulses of the mind you refer the act in question; you will have to decide, whether you attribute it wholly to mischief and malice, or wholly to insanity, or to the one mixing itself with the other. If you find it attributable to mischief and malice *only*, LET THE MAN DIE. The law demands his death for the public safety. If you consider it as conscious malice and mischief mixing itself with insanity, I leave him in the hands of the Court, to say how he is to be dealt with; it is a question too difficult for me. I do not stand here to disturb the order of society, or to bring confusion upon my country; but, if you find that the act was committed wholly under the dominion of insanity; if you are satisfied that he went to the theatre contemplating his own destruction only; and that, when he fired the pistol, he did not *maliciously* aim at the person of the King—you will then be bound, even upon the principle which the Attorney-General himself humanely and honourably stated to you, to acquit this most unhappy prisoner.

If, in bringing these considerations hereafter to the standard of the evidence, any doubts should occur to you on the subject, the question for your decision will then be, which of the two alternatives is the most probable—a duty which you will perform by the exercise of that reason of which, for wise purposes, it has pleased God to deprive the unfortunate man whom you are trying; your sound understandings will easily enable you to distinguish *infirmities*, which are *misfortunes*, from *motives*, which are crimes. Before the day ends the evidence will be decisive upon this subject.

There is, however, another consideration which I ought distinctly to present to you, because I think that more turns upon it than any other view of the subject—namely, whether the prisoner's defence can be impeached for artifice or fraud; because I admit, that if, at the moment when he was apprehended, there can be fairly imputed to him any pretence or counterfeit of insanity, it would taint the whole case, and leave him without protection; but for such a suspicion there is not even a shadow of foundation. It is repelled by the whole history and character of his disease, as well as of his life, independent of it. If you were trying a man under the Black Act, for shooting at another, and there was a doubt upon the question of malice, would it not be important, or rather decisive evidence, that the prisoner had no resentment against the prosecutor; but that, on the contrary, he was a man whom he had always loved and served? Now the prisoner was maimed, cut down, and destroyed, in the service of the King.

Gentlemen, another reflection presses very strongly on my mind, which I find it difficult to suppress, in every state there are political differences and parties, and individuals disaffected to the system of government under which they live as subjects. There are not many such, I trust, in this country; but whether there are many or any of such persons, there is one circumstance which has peculiarly distinguished his Majesty's life and reign, and which is in itself as a host in the prisoner's defence:—since, amidst all the treasons and all the seditions which have been charged on reformers of government as conspiracies to disturb it, no hand or voice has been lifted up against the person of the King; there have, indeed, been unhappy lunatics who, from ideas too often mixing themselves with insanity, have intruded themselves into the palace—but no malicious attack has ever been made upon the King, to be settled by a trial: his Majesty's character and conduct have been a safer shield than guards or than laws. Gentlemen, I wish to continue to that sacred life that best of all securities; I seek to continue it under that protection where it has been so long protected. We are not to do evil that good may come of it; we are not to stretch the laws to hedge round the life of the king with a greater security than that which the Divine Providence has so happily realised.

Perhaps there is no principle of religion more strongly inculcated by the Sacred Scriptures than by that beautiful and encouraging lesson of our Saviour Himself upon confidence in the Divine protection: "Take no heed for your life, what ye shall eat, or what ye shall drink, or wherewithal ye shall be clothed; but seek ye first the kingdom of God, and all these things shall be added unto you." By which it is undoubtedly not intended that we are to disregard the conservation of life, or to neglect the means necessary for its sustentation; nor that we are to be careless of whatever may contribute to our comfort and happiness—but that we should be

contented to receive them as they are given to us, and not seek them in the violation of the rule and order appointed for the government of the world. On this principle nothing can more tend to the security of his Majesty and his Government, than the scene which this day exhibits in the calm, humane, and impartial administration of justice; and if, in my part of this solemn duty, I have in any manner trespassed upon the just security provided for the public happiness, I wish to be corrected. I declare to you, solemnly, that my only aim has been to secure for the prisoner at the bar, whose life and death are in the balance, that he should be judged rigidly by the evidence and the law. I have made no appeal to your passions—you have no right to exercise them. This is not even a case in which, if the prisoner be found guilty, the royal mercy should be counselled to interfere: he is either an accountable being, or not accountable. If he was *unconscious* of the mischief he was engaged in, the law is a corollary, and he is not guilty; but if, when the evidence closes, you think he was conscious, and maliciously meditated the treason he is charged with, it is impossible to conceive a crime more vile and detestable; and I should consider the King's life to be ill attended to, indeed, if not protected by the full vigour of the laws, which are watchful over the security of the meanest of his subjects. It is a most important consideration, both as it regards the prisoner, and the community of which he is a member. Gentlemen, I leave it with you.

The prisoner was acquitted as having committed the act under the dominion of insanity.

SPEECH for the REV. GEORGE MARKHAM against JOHN FAWCETT, Esq., for criminal conversation with the Plaintiff's wife; before the Deputy-Sheriff of Middlesex and a Special Jury, upon an inquisition of damages.

PREFACE.

WITH regard to the facts, no preface is necessary. They are all detailed in Mr. Erskine's speech for the plaintiff; and no evidence was offered on the defendant's part, who had let judgment go by default. The inquisition was taken upon the 4th of May 1802, before the Sheriff of Middlesex and a Special Jury, at the King's Arms Tavern, in Palace Yard, Westminster, at six in the evening, after the business of the Courts at Westminster had finished.

The jury found a verdict with £7000 damages, which we have been informed were never levied, the defendant having left the kingdom.

MR. ERSKINE'S SPEECH FOR THE PLAINTIFF.

MR. SHERIFF AND GENTLEMEN OF THE JURY,—In representing the unfortunate gentleman who has sustained the injury which has been stated to you by my learned friend Mr. Holroyd, who opened the pleadings, I feel one great satisfaction—a satisfaction founded, as I conceive, on a sentiment perfectly constitutional. I am about to address myself to men whom I *personally know*; to men honourable in their lives, moral, judicious, and capable of correctly estimating the injuries they are called upon to condemn in their character of jurors. This, gentlemen, is the only country in the world where there is such a tribunal as the one before which I am now to speak, for, however in other countries such institutions as our own may have been set up of late, it is only by that maturity which it requires ages to give to governments, by that progressive wisdom which has slowly ripened the constitution of our country, that it is possible there can exist such a body of men as YOU are. It is the great privilege of the subjects of England that they judge one another. It is to be recollected that, although we are in this private room, all the sanctions of justice are present. It makes no manner of difference whether I address you in the presence of the

Under-Sheriff, your respectable chairman, or with the assistance of the highest magistrate of the State.

The defendant has, on this occasion, suffered judgment by default; *other* adulterers have done so before him. Some have done so under the idea that, by suffering judgment against them, they had retired from the public eye—from the awful presence of the Judge; and that they came into a corner where there was not such an assembly of persons to witness their misconduct, and where it was to be canvassed before persons who might be less qualified to judge the case to be addressed to them.

It is not long, however, since such persons have had an opportunity of judging how much they were mistaken in this respect: the largest damages, in cases of adultery, have been given in this place. By this place I do not mean the particular room in which we are now assembled, but under inquisitions directed to the sheriff: and the instances to which I allude are of modern, and, indeed, recent date.

Gentlemen, after all the experience I have had, I feel myself, I confess, considerably embarrassed in what manner to address you. There are some subjects that harass and overwhelm the mind of man. There are some kinds of distresses one knows not how to deal with. It is impossible to contemplate the situation of the plaintiff without being disqualified, in some degree, to represent it to others with effect. It is no less impossible for you, gentlemen, to receive on a sudden the impressions which have been long in *my* mind, without feeling overpowered with sensations, which, after all, had better be absent, when men are called upon, in the exercise of duty, to pronounce a legal judgment.

The plaintiff is the third son of his Grace the Archbishop of York, a clergyman of the Church of England: presented in the year 1791 to the living of Stokely, in Yorkshire; and now, by his Majesty's favour, Dean of the Cathedral of York. He married in the year 1789 Miss Sutton, the daughter of Sir Richard Sutton, Bart., of Norwood, in Yorkshire, a lady of great beauty and accomplishments, most virtuously educated, and who but for the crime of the defendant which assembles you here, would, as she has expressed it herself, have been the happiest of womankind. This gentleman having been presented in 1791 by his father to this living, where, I understand, there had been no resident rector for forty years, set an example to the Church and to the public, which was peculiarly virtuous in a man circumstanced as he was; for, if there can be any person more likely than another to protect himself securely with privileges and indulgences, it might be supposed to be the son of the metropolitan of the province. This gentleman, however, did not avail himself of the advantage of his birth and station; for, although he was a very young man, he devoted himself entirely to the sacred duties of his profession. At a large expense he repaired the Rectory House for the reception of his

family, as if it had been his own patrimony, whilst, in his extensive improvements, he adopted only those arrangements which were calculated to lay the foundation of an innocent and peaceful life. He had married this lady, and entertained no other thought than that of cheerfully devoting himself to all the duties, public and private, which his situation called upon him to perform.

About this time, or soon afterwards, the defendant became the purchaser of an estate in the neighbourhood of Stokely, and, by such purchase, an inhabitant of that part of the country, and the neighbour of this unfortunate gentleman. It is a most affecting circumstance, that the plaintiff and the defendant had been bred together at Westminster School; and in my mind it is still more affecting, when I reflect what it is which has given to that school so much rank, respect, and illustration. It has derived its highest advantages from the reverend father of the unfortunate gentleman whom I represent. It was the School of Westminster which gave birth to that learning which afterwards presided over it, and advanced its character. However some men may be disposed to speak or write concerning public schools, I take upon me to say, they are among the wisest of our institutions. Whoever looks at the national character of the English people, and compares it with that of all the other nations upon the earth, will be driven to impute it to that reciprocation of ideas and sentiments which fill and fructify the mind in the early period of youth, and to the affectionate sympathies and friendships which rise up in the human heart before it is deadened or perverted by the interests and corruptions of the world. These youthful attachments are proverbial, and, indeed, few instances have occurred of any breaches of them; because a man, before he can depart from the obligations they impose, must have forsaken every principle of virtue and every sentiment of manly honour. When, therefore, the plaintiff found his old school-fellow and companion settled in his neighbourhood, he immediately considered him as his brother. Indeed, he might well consider him as a brother, since, after having been at Westminster, they were *again* thrown together in the same college at Oxford; so that the friendship they had formed in their youth became cemented and consolidated upon their first entrance into the world. It is no wonder, therefore, that when the defendant came down to settle in the neighbourhood of the plaintiff he should be attracted towards him by the impulse of his former attachment. He recommended him to the Lord-Lieutenant of the county, and, being himself a magistrate, he procured him a share in the magistracy. He introduced him to the respectable circle of his acquaintances; he invited him to his house, and cherished him there as a friend. It is *this* which renders the business of to-day most affecting as it regards the plaintiff, and wicked in the extreme as it relates to the defendant, because the confidences of friendship conferred the oppor-

tunities of seduction. The plaintiff had no pleasures or affections beyond the sphere of his domestic life; and except on his occasional residences at York, which were but for short periods, and at a very inconsiderable distance from his home, he constantly reposed in the bosom of his family. I believe it will be impossible for my learned friend to invade his character; on the contrary, he will be found to have been a pattern of conjugal and parental affection.

Mr. Fawcett being thus settled in the neighbourhood, and thus received by Mr. Markham as his friend and companion, it is needless to say he could harbour no suspicion that the defendant was meditating the seduction of his wife. There was nothing, indeed, in his conduct, or in the conduct of the unfortunate lady, that could administer any cause of jealousy to the most guarded or suspicious temper. Yet, dreadful to relate—and it is, indeed, the bitterest evil of which the plaintiff has to complain—a criminal intercourse for nearly five years before the discovery of the connection had most probably taken place.

I will leave you to consider what must have been the feelings of such a husband, upon the fatal discovery that his wife, and such a wife, had conducted herself in a manner that not merely deprived him of her comfort and society, but placed him in a situation too horrible to be described. If a man without children is suddenly cut off by an adulterer from all the comforts and happiness of marriage, the discovery of *his* condition is happiness itself when compared with that to which the plaintiff is reduced. When children, by a woman lost for ever to the husband by the arts of the adulterer, are begotten in the unsuspected days of virtue and happiness there remains a consolation; mixed, indeed, with the most painful reflections, yet a consolation still. But what is the plaintiff's situation? He does not know at *what time* this heavy calamity fell upon him—he is tortured with the most afflicting of all human sensations. When he looks at the children, whom he is by law bound to protect and to provide for, and from whose existence he ought to receive the delightful return which the union of instinct and reason has provided for the continuation of the world, he knows not whether he is lavishing his fondness and affection upon his own children, or upon the seed of a villain sown in the bed of his honour and his delight. He starts back with horror, when, instead of seeing his own image reflected from their infant features, he thinks he sees the destroyer of his happiness—a midnight robber introduced into his house, under professions of friendship and brotherhood—a plunderer, not in the repositories of his treasure which may be supplied, or lived without,

“ But there, where he had garnered up his hopes,
Where either he must live or bear no life.”

In this situation the plaintiff brings his case before you, and the defendant attempts no manner of defence: he admits his guilt,—

he renders it unnecessary for me to go into any proof of it ; and the only question, therefore, that remains, is for you to say what shall be the consequences of his crime, and what verdict you will pronounce against him. You are placed, therefore, in a situation most momentous to the public ; you have a duty to discharge, the result of which not only deeply affects the present generation, but which remotest posterity will contemplate to your honour or dishonour. On *your* verdict it depends whether persons of the description of the defendant, who have cast off all respect for religion, who laugh at morality when it is opposed to the gratification of their passions, and who are careless of the injuries they inflict upon others, shall continue their impious and destructive course with impunity. On *your* verdict it depends whether such men, looking to the proceedings of courts of justice, shall be able to say to themselves, that there are *certain limits* beyond which the damages of juries are not to pass. On *your* verdict it depends whether men of large fortunes shall be able to adopt this kind of reasoning to spur them on in the career of their lusts :—There are many chances that I may not be discovered at all : there are chances that, if I am discovered, I may not be the object of legal inquiry, and supposing I should, there are certain damages beyond which a jury cannot go : they may be large, but still within a certain compass ; if I cannot pay them myself, there may be persons belonging to my family who will pity my situation—somehow or other the money may be raised, and I may be delivered from the consequences of my crime. *I trust the verdict of this day will show men who reason thus that they are mistaken.*

The action for adultery, like every other action, is to be considered according to the extent of the injury, which the person complaining to a court of justice has received. If he has received an injury, or sustained a loss that can be estimated directly in money, there is then no other medium of redress, but in moneys numbered according to the extent of the proof. I apprehend it will not be even stated by the counsel for the defendant, that if a person has sustained a loss, and can show it is to any given extent, he is not entitled to the *full measure* of it in damages. If a man destroys my house or furniture, or deprives me of a chattel, I have a right, *beyond all manner of doubt*, to recover their corresponding values in money ; and it is no answer to me to say, that he who has deprived me of the advantage I before possessed, is in no situation to render me satisfaction. A verdict pronounced upon such a principle, in any of the cases I have alluded to, would be set aside by the Court, and a new trial awarded. It would be a direct breach of the oaths of jurors, if, impressed with a firm conviction that a plaintiff had received damages to a given amount, they retired from their duty, because they felt commiseration for a defendant, even in a case where he might be worthy of compassion from the injury being unpremeditated and inadvertent.

But there are other wrongs which cannot be estimated in money—

“ You cannot minister to a *mind* diseased.”

You cannot redress a man who is wronged beyond the possibility of redress—the law has no means of restoring to him what he has lost. God Himself, as He has constituted human nature, has no means of alleviating such an injury as the one I have brought before you. While the sensibilities, affections, and feelings He has given to man remain, it is impossible to heal a wound which strikes so deep into the soul. When you have given to a plaintiff, in damages, all that figures can number, it is as nothing; he goes away hanging down his head in sorrow, accompanied by his wretched family, dispirited and dejected. Nevertheless, the law has given a civil action for adultery, and, strange to say, it has given *nothing else*. The law commands that the injury shall be compensated (as far as it is practicable) IN MONEY, because courts of *civil* justice have no other means of compensation THAN *money*; and the only question, therefore, and which *you* upon your oaths are to decide, is this: Has the plaintiff sustained an injury up to the extent which he has complained of? Will twenty thousand pounds place him in the same condition of comfort and happiness that he enjoyed before the adultery, and which the adulterer has deprived him of? You know that it will not. Ask your own hearts the question, and you will receive the same answer. I should be glad to know, then, upon what principle, as it regards the *private* justice, which the plaintiff has a right to, or upon what principle, as the example of that justice affects the public and the remotest generations of mankind, you can reduce this demand even in a single farthing.

This is a doctrine which has been frequently countenanced by the noble and learned lord who lately presided in the Court of King's Bench; * but his lordship's reasoning on the subject has been much misunderstood, and frequently misrepresented. The noble lord is supposed to have said, that although a plaintiff may not have sustained an injury by adultery to a given amount, yet that large damages, for the sake of public example, should be given. He never said any such thing. He said that which law and morals dictated to him, and which will support his reputation as long as law and morals have a footing in the world. He said that every plaintiff had a right to recover damages *up to the extent of the injury he had received*, and that public example stood in the way of showing *favour* to an adulterer, by reducing the damages below the sum which the jury would otherwise consider as the lowest compensation for the wrong. If the plaintiff shows you that he was a most affectionate husband; that his parental and conjugal affections were the solace of his life; that for nothing the

* Lord Kenyon.

world could bestow in the shape of riches or honours, would he have bartered one moment's comfort in the bosom of his family, he shows you a wrong *that no money can compensate*; nevertheless, if the injury is only measurable in money, and if you are sworn to make upon your oaths a pecuniary compensation, though I can conceive that the damages when given to the extent of the declaration, and you can give no more, may fall short of what your consciences would have dictated, yet I am utterly at a loss to comprehend upon what principle they can be *lessened*. But then comes the defendant's counsel, and says, "It is true that the injury cannot be compensated by the sum which the plaintiff has demanded; but you will consider the miseries my client must suffer, if you make him the object of a severe verdict. You must, therefore, regard him with compassion; though I am ready to admit the plaintiff is to be compensated for the injury he has received."

Here, then, Lord Kenyon's doctrine deserves consideration: "He who will mitigate damages below the fair estimate of the wrong which he has committed, must do it upon some principle which the policy of the law will support."

Let me, then, examine whether the defendant is in a situation which entitles him to have the damages against him *mitigated*, when private justice to the injured party calls upon you to give them to THE UTMOST FARTHING. The question will be—On what principle of mitigation he can stand before you? I had occasion, not a great while ago, to remark to a jury, that the wholesome institutions of the civilised world came seasonably in aid of the dispensations of Providence for our well-being in the world. If I were to ask, what it is that prevents the prevalence of the crime of incest, by taking away those otherwise natural impulses, from the promiscuous gratification of which we should become like the beasts of the field, and lose all the intellectual endearments which are at once the pride and the happiness of man? What is it that renders our houses pure, and our families innocent? It is that, by the wise institutions of all civilised nations, there is placed a kind of guard against the human passions, in that sense of impropriety and dishonour, which the law has raised up, and impressed with almost the force of a second nature. This wise and politic restraint beats down, by the habits of the mind, even a propensity to incestuous commerce, and opposes those inclinations, which nature, for wise purposes, has implanted in our breasts at the approach of the other sex. It holds the mind in chains against the seductions of beauty. It is a moral feeling in perpetual opposition to human infirmity. It is like an angel from heaven placed to guard us against propensities which are evil. It is *that* warning voice, gentlemen, which enables you to embrace your daughter, however lovely, without feeling that you are of a different sex. It is *that* which enables you, in the same manner, to live familiarly

with your nearest female relations, without those desires which are natural to man.

Next to the tie of blood (if not, indeed, before it), is the sacred and spontaneous relation of friendship. The man who comes under the roof of a married friend ought to be under the dominion of the same moral restraint; and, thank God, generally is so, from the operation of the causes which I have described. Though not insensible to the charms of female beauty, he receives its impressions under a habitual reserve, which honour imposes. Hope is the parent of desire, and honour tells him he must not hope. Loose thoughts may arise, but they are rebuked and dissipated—

“ Evil into the mind of God or man
May come and go, so unapproved, and leave
No spot or blame behind.”

Gentlemen, I trouble you with these reflections, that you may be able properly to appreciate the guilt of the defendant; and to show you that you are not in a case where large allowances are to be made for the ordinary infirmities of our imperfect natures. When a man does wrong in the heat of *sudden* passion—as, for instance, when, upon receiving an affront, he rushes into immediate violence, even to the deprivation of life, the humanity of the law classes his offence amongst the lower degrees of homicide; it supposes the crime to have been committed before the mind had time to parley with itself. But is the criminal act of such a person, however disastrous may be the consequence, to be compared with that of the defendant? Invited into the house of a friend—received with the open arms of affection, as if the same parents had given them birth and bred them; in *THIS* situation, this most monstrous and wicked defendant deliberately perpetrated his crime; and, shocking to relate, not only continued the appearances of friendship, after he had violated its most sacred obligations, but continued them as a cloak to the barbarous repetitions of his offence—writing letters of regard, whilst, perhaps, he was the father of the last child, whom his injured friend and companion was embracing and cherishing as his own. What protection can such conduct possibly receive from the humane consideration of the law for sudden and violent passions? A passion for a woman is progressive—it does not, like anger, gain an uncontrolled ascendancy in a moment, nor is a modest matron to be seduced in a day. Such a crime cannot, therefore, be committed under the resistless dominion of *sudden* infirmity; it must be *deliberately, wilfully, and wickedly* committed. The defendant could not possibly have incurred the guilt of this adultery without often passing through his mind (for he had the education and principles of a gentleman) the very topics I have been insisting upon before you for his condemnation. Instead of being impelled towards mischief, without leisure for such reflections, he had innumerable difficulties and obstacles to contend with. He could not

but hear in the first refusals of this unhappy lady everything to awaken conscience, and even to excite horror. In the arguments he must have employed to seduce *her* from *her* duty, he could not but recollect, and wilfully trample upon *his own*. He was a year engaged in the pursuit—he resorted repeatedly to his shameful purpose, and advanced to it at such intervals of time and distance, as entitle me to say, that he determined in cold blood to enjoy a future and momentary gratification at the expense of every principle of honour which is held sacred amongst gentlemen, even where no laws interpose their obligations or restraints.

I call upon you, therefore, gentlemen of the jury, to consider well this case, for it is *your* office to keep human life in tone—*your* verdict must decide whether such a case can be indulgently considered, without tearing asunder the bonds which unite society together.

Gentlemen, I am not preaching a religion which men can scarcely practise. I am not affecting a severity of morals beyond the standard of those whom I am accustomed to respect, and with whom I associate in common life. I am not making a stalking-horse of adultery, to excite exaggerated sentiment. This is not the case of a gentleman meeting a handsome woman in a public street, or in a place of public amusement; where, finding the coast clear for his addresses, without interruption from those who should interrupt, he finds himself engaged (probably the successor of another) in a vain and transitory intrigue. It is not the case of him who, night after night, falls in with the wife of another to whom he is a stranger, in the boxes of a theatre, or other resorts of pleasure, inviting admirers by indecent dress and deportment, unattended by anything which bespeaks the affectionate wife and mother of many children. Such connections may be of evil example, but I am not here to reform public manners, but to demand private justice. It is impossible to assimilate the sort of cases I have alluded to, which ever will be occasionally occurring, with this atrocious invasion of household peace; this portentous disregard of everything held sacred amongst men good or evil. Nothing, indeed, can be more affecting than even to be called upon to state the evidence I must bring before you; I can scarcely pronounce to you that the victim of the defendant's lust was the mother of nine children seven of them females and infants, unconscious of their unhappy condition, deprived of their natural guardian, separated from her for ever, and entering the world with a dark cloud hanging over them. But it is not in the descending line alone that the happiness of this worthy family is invaded. It hurts me to call before you the venerable progenitor of both the father and the children, who has risen by extraordinary learning and piety to his eminent rank in the Church, and who, instead of receiving, unmixed and undisturbed, the best consolation of age, in counting up the number of his descendants,

carrying down the name and honour of his house to future times. may be forced to turn aside his face from *some of them*, that bring to his remembrance the wrongs which now oppress him, and which it is his duty to forget, because it is his, otherwise impossible, duty to forgive them.

Gentlemen, if I make out this case by evidence (and, if I do not, forget everything you have heard, and reproach me for having abused your honest feelings), I have established a claim for damages that has no parallel in the annals of fashionable adultery. It is rather like the entrance of sin and death into this lower world. The undone pair were living like our first parents in Paradise, till this demon saw and envied their happy condition. Like them, they were in a moment cast down from the pinnacle of human happiness into the very lowest abyss of sorrow and despair. In one point, indeed, the resemblance does not hold, which, while it aggravates the crime, redoubles the sense of suffering. It was not from an enemy, but from a friend, that this evil proceeded. I have just had put into my hand a quotation from the Psalms upon this subject, full of that unaffected simplicity which so strikingly characterises the sublime and sacred poet:—

“It is not an open enemy that hath done me this dishonour, for then I could have borne it.

“Neither was it mine adversary that did magnify himself against me; for then, peradventure, I would have hid myself from him.

“But it was even *thou* my companion, my guide, mine own familiar friend.”

This is not the language of counsel, but the inspired language of truth. I ask you solemnly, upon your honours and your oaths, if you would exchange the plaintiff's former situation for his present, for an hundred times the compensation he requires at your hands. I am addressing myself to affectionate husbands and to the fathers of beloved children. Suppose I were to say to you, There is twenty thousand pounds for you—embrace your wife for the last time, and the child that leans upon her bosom and smiles upon you—retire from your house, and make way for the adulterer—wander about an object for the hand of scorn to point its slow and moving finger at—think no more of the happiness and tranquillity of your former state—I have destroyed them for ever; but never mind—don't make yourself uneasy—here is a draft upon my banker, it will be paid at sight—there is no better man in the city. I can see you think I am mocking you, gentlemen, and well you may; but it is the very pith and marrow of this cause. It is impossible to put the argument in mitigation of damages in plain English, without talking such a language, as appears little better than an insult to your understandings, dress it up as you will.

But it may be asked—if no money can be an adequate, or indeed any compensation, why is Mr. Markham a plaintiff in a civil

ACTION? Why does he come here for money? Thank God, gentlemen, IT IS NOT MY FAULT. I take honour to myself, that I was one of those who endeavoured to put an end to this species of action, by the adoption of a more salutary course of proceeding. I take honour to myself, that I was one of those who supported in Parliament the adoption of a law to pursue such outrages with the terrors of criminal justice. I thought then, and I shall always think, that every act *malum in se* directly injurious to an individual, and most pernicious in its consequences to society, should be considered to be a misdemeanour. Indeed, I know of no other definition of the term; the Legislature, however, thought otherwise, and I bow to its decision; but the business of this day may produce some changes of opinion on the subject. I never meant that *every* adultery was to be similarly considered. Undoubtedly there are cases where it is comparatively venial, and judges would not overlook the distinctions. I am not a pretender to any extraordinary purity. My severity is confined to cases in which there can be but one sentiment amongst men of honour, as to the offence, though they may differ in the mode and measure of its correction.

It is this difference of sentiment, gentlemen, that I am alone afraid of; I fear you may think there is a sort of limitation in verdicts, and that you may look to precedents for the amount of damages, though you can find no precedents for the magnitude of the crime; but you might as well abolish the action altogether, as lay down a principle which limits the consequences of adultery to what it may be convenient for the adulterer to pay. By the adoption of such a principle, or by any mitigation of severity, arising even from an insufficient reprobation of it, you unbar the sanctuary of domestic happiness, and establish a sort of license for debauchery, to be sued out like other licenses, at its price. A man has only to put money into his pocket, according to his degree and fortune, and he may then debauch the wife or daughter of his best friend, at the expense he chooses to go to. He has only to say to himself what Iago says to Roderigo in the play—

“Put money in thy purse—go to—put money in thy purse.”

Persons of immense fortunes might, in this way, deprive the best men in the country of their domestic satisfactions, with what to them might be considered as impunity. The most abandoned profligate might say to himself, or to other profligates, “I have suffered judgment by default—let them send down their deputy-sheriff to the King’s Arms Tavern; I shall be concealed from the eye of the public—I have drawn upon my banker for the *utmost damages*, and I have as much more to spare to-morrow, if I can find another woman whom I would choose to enjoy at such a price.” In this manner I have seen a rich delinquent, too lightly fined by courts of

criminal justice, throw down his bank-notes to the officers, and retire with a deportment, not of contrition, but contempt.

For these reasons, gentlemen, I expect from you to-day the full measure of damages demanded by the plaintiff. Having given such a verdict, you will retire with a monitor within, confirming that you have done right—you will retire in sight of an approving public, and an approving Heaven. Depend upon it, the world cannot be held together without morals; nor can morals maintain their station in the human heart without religion, which is the corner-stone of the fabric of human virtue.

We have lately had a most striking proof of this sublime and consoling truth, in *one* result, *at least*, of the revolution which has astonished and shaken the earth. Though a false philosophy was permitted *for a season* to raise up her vain, fantastic front, and to trample down the Christian establishments and institutions, yet, on a sudden, God said, "Let there be light, and there was light." The altars of religion were restored: not purged indeed of human errors and superstitions, not reformed in the just sense of reformation, yet the Christian religion is still re-established; leading on to further reformation; fulfilling the hope, that the doctrines and practice of Christianity shall overspread the face of the earth.

Gentlemen, as to us, we have nothing to wait for; we have long been in the centre of light—we have a true religion and a free government, **AND YOU ARE THE PILLARS AND SUPPORTERS OF BOTH.**

I have nothing further to add, except that, since the defendant committed the injury complained of, he has sold his estate, and is preparing to remove into some other country. Be it so. Let him *remove*; but you will have to pronounce the penalty of his *return*. It is for you to declare whether such a person is worthy to be a member of our community. But if the feebleness of your jurisdiction, or a commiseration which destroys the exercise of it, shall shelter such a criminal from the consequence of his crimes, individual security is gone, and the rights of the public are unprotected. Whether this be our condition or not, I shall know by your verdict.

EXTRACT from a Pamphlet entitled, "A View of the Causes and Consequences of the War with France," published by Mr. Erskine in 1797.

"FOR this purpose of alarm the honest but irregular zeal of some societies, instituted for the reform of Parliament, furnished a seasonable, but a contemptible pretext; they had sent congratulations to the French Government when it had ceased to be monarchical, in their correspondences through the country, on the abuses and corruptions of the British Constitution; they had unfortunately mixed many ill-timed and extravagant encomiums upon the Revolution of France, whilst its practice, for the time, had broke loose from the principles which deserved them, and in their just indignation towards the confederacies then forming in Europe, they wrote many severe strictures against their monarchical, establishments, from which the mixed principles of our own Government were not distinctly or prudently separated. They wrote besides, as an incitement to the reform of Parliament, many bitter observations upon the defective constitution, and the consequent corruptions of the House of Commons, some of which, according to the just theory of the law, were unquestionably libels.

"These irregularities and excesses were for a considerable length of time wholly overlooked by Government. Mr. Paine's works had been extensively and industriously circulated throughout England and Scotland; the correspondences, which above a year afterwards became the subject of the State trials, had been printed in every newspaper, and sold without question or interruption in every shop in the kingdom, when a circumstance took place, not calculated, one would imagine, to have occasioned any additional alarm to the country, but which (mixed with the effects on the public from Mr. Burke's first celebrated publication on the French Revolution) seems to have given rise to the king's proclamation, the first act of Government regarding France and her affairs.

"A few gentlemen, not above fifty in number, and consisting principally of persons of rank, talents, and character, formed themselves into a society under the name of the Friends of the People. They had observed with concern, as they professed in the published motives of their association, the grossly unequal representation of the people in the House of Commons, its effects upon the measures of Government; but, above all, its apparent tendency to lower the dignity of Parliament, and to deprive it of the opinion of the people. Their avowed object was, therefore, to bring the very cause which

Mr. Pitt had so recently taken the lead in, fairly and respectfully before the House of Commons, in hopes, as they declared, to tranquillise the agitated part of the public, to restore affection and respect for the Legislature, so necessary to secure submission to its authority, and by concentrating the views of all reformers to the preservation of our invaluable constitution, to prevent that fermentation of political opinion which the French Revolution had undoubtedly given rise to from taking a republican direction in Great Britain.* These were not only the professed objects of this association, but the truth and good faith of them received afterwards the sanction of judicial authority, when their proceedings were brought forward by Government in the course of the State trials.

"Nevertheless, on the very day that Mr. Grey,† at the desire of this small society, gave notice of his intended motion in the House of Commons, there was an instantaneous movement amongst Ministers as if a great national conspiracy had been discovered. No act of Government appeared to have been in agitation before that period, although the correspondences before alluded to had for months been public and notorious, and there was scarcely an information, even for a libel, upon the file of the Court of King's Bench. Nevertheless, a council was almost immediately held, and his Majesty was advised to issue his royal proclamation of the 21st of May 1792, to rouse the vigilance and attention of the magistrates throughout the kingdom to the vigorous discharge of their duties.

"If this had been the only object of the proclamation, and if it had been followed up by no other proceedings than the suppression of libels, and a coercive respect for the authorities of Parliament, it would have been happy for England. Unfortunately it seemed to have other objects, which, if as a subject of the country I have no right to condemn, I may at least with the freedom of history be now allowed to lament.

"The proclamation had unquestionably for its object to spread the alarm against French principles, and to do it effectually, all principles were considered as French by his Majesty's Ministers which questioned the infallibility of their own Government, or which looked towards the least change in the representation of the people in Parliament.

"If it had issued, however, under the authority of the British Ministry only, it probably could not have produced its important and unfortunate effects. But the Minister, before he advised the measure, had taken care to secure the disunion of the Whig party which had hitherto firmly and uniformly opposed both the principles and practice of his administration. To this body I

* I declare, upon my honour, these were my reasons for becoming a member of that society.

† Afterwards Earl Grey.

gloried to belong, as I still do to cling even to the weather-beaten pieces of the wreck which remains of it. Neither am I ashamed of the appellation of party, when the phrase is properly understood, for without parties cemented by the union of sound principles, evil men and evil principles cannot be successfully resisted. I flatter myself that the people of England will not hastily believe that I have ever been actuated in my public conduct by interest or ambition.

"The Whig party, as it has been called, was insignificant indeed from its numbers, and weak from the formidable influence of the Crown in the hands of its adversaries, but formidable nevertheless from illustrious rank, great property, and splendid talents; still more from an opinion of public integrity which formed a strong hold upon the minds of the country. I look back with the most heartfelt and dispiriting sorrow to the division of this little phalanx, whose union upon the principles which first bound them together might, in spite of differences of opinion in matters concerning which good men may fairly differ, have preserved the peace of the world, re-animated the forms of our own Constitution, and averted calamities the end of which I tremble to think of. Reflecting, however, as I do upon the frailties of human nature, adverting to the deceptions which may be practised upon it, and which men by insensible degrees unconsciously may practise upon themselves, compelled by candour to keep in view the unexampled crisis of the French Revolution, the horrors which disfigured it, the alarms inseparable from it, but above all the dexterous artifices which it furnished to inflame and to mislead, I wish to draw a veil over the stages which divided statesmen and friends at the very moment of all others when they ought to have drawn closer together, and when their union might have preserved their country. I shall, therefore, content myself with observing, that before the King's proclamation was issued, the support of the Duke of Portland had not only probably been secured to it, but the assent of some of the most distinguished persons in the opposition had been well understood to the whole of that system of measures which ended in the war with France.

"The proclamation thus supported was planted as the only genuine banner of loyalty throughout the kingdom, *voluntary bodies to strengthen the executive power by maintaining prosecutions were everywhere instituted, society was rent asunder, and the harmony and freedom of English manners were for a season totally destroyed.*"

PROCEEDINGS OF THE FRIENDS OF THE LIBERTY
OF THE PRESS.

January 19, 1793.

The Honourable THOMAS ERSKINE, M.P., in the Chair.

Mr. Erskine said, that though he did not regard calumny and misrepresentation, as far as it affected himself personally, which he took it for granted was the case with every gentleman present, yet, as far as it affected the great object for which they were assembled, it was of the highest importance to the public: that he should, therefore, to render misrepresentation utterly impossible, read what he had to say from a paper which he had written. He then read the following declaration:—

“The peculiar excellence of the English constitution, on which indeed the value of every Government may be summed up, is that it creates an equal rule of action for the whole nation, and an impartial administration of justice under it.

“From those master principles results that happy, unsuspecting, and unsuspected freedom which for ages has distinguished society in England, and which has united Englishmen in an enthusiasm for their country, and a reverence for their laws.

“To maintain this fearless tranquillity of human life, the prime blessing of social union, the power of accusation was not given to *uninjured* individuals, much less to *voluntary, undefined, unauthorised* associations of men, acting without responsibility, and open to irregular and private motives of action, but was conferred upon the supreme executive magistrate, as more likely to look down upon the mass of the community with an unimpassioned eye; and even that wisely placed trust, guarded by the personal responsibility of those officers by which the Crown is obliged to exercise its authority, and in the higher order of crimes (which on principle should extend to all), guarded once again by the office of the grand jury, interposed as a shield between the people and the very laws enacted by themselves.

“Those admirable provisions appear to be founded in a deep acquaintance with the principles of society, and to be attended with the most important benefits to the public; because, tempered again, and finally with the trial by the country, they enable the English

constitution to ratify the existence of a *strong, hereditary, executive* Government, consistently with the security of popular freedom.

"By this arrangement of the royal prerogative of accusation, so restrained and mitigated in its course, the Crown becomes an object of wholesome, but not dangerous jealousy; which, while it prevents it from overstepping its constitutional limits, endears the people to one another from a sense of the necessity of union amongst themselves, for the preservation of their privileges against a power dangerous to remove, but equally dangerous to exist, unobserved and unbalanced.

"Under this system, making allowance for the vices and errors inseparable from humanity, State accusations, *in modern times*, though sometimes erroneous, have not often been rash or malevolent; the criminal under the weight of the firm hand of justice has been supported by the indulgent fraternal tribunal of his country.

"But under the circumstances which assemble us together all these provisions appear to be endangered.

"A sudden alarm has been spread through the kingdom by the ministers of the Crown, of imminent danger to the constitution, and to all order and government. The nation has been represented to be fermenting into sedition and insurrection, through the dangerous associations and writings of disaffected and alienated subjects; and under the pressure of this perilous conjuncture the Parliament has been suddenly assembled and the militia embodied.

"The existence or extent of those evils since they have been sanctioned, though not ascertained, by the authority of Parliament when assembled, we have not, upon the present occasion, assembled to debate; but we may, without sedition, congratulate our fellow-subjects that our ministers have had the vigilance to detect those *numerous and bloody* insurrections which otherwise might have *secreted themselves*, and passed *unknown and undiscovered*; and that without the punishment of a single individual, for any overt act of treason, the people have recovered all that tranquillity and respect for the laws, which they appeared to us to have equally possessed at the time when the alarm burst forth.

"That large classes of the community should, nevertheless, give faith to the assertions and acts of a *responsible* Government, is neither to be wondered at nor disapproved. When the English constitution is authoritatively represented to be in danger, we rejoice in the enthusiasm of Englishmen to support it. When that danger is further represented to have been caused or increased by the circulation of treasonable and seditious writings, we acknowledge that it is the duty of every good subject, in his proper sphere, and by *proper means*, to discountenance them. Nothing is further from the intention of this meeting than to hold up to public disapprobation such individuals as, from honest motives, have joined

associations, even though they may in their zeal have shot beyond that line of exertion which we (mistakenly, perhaps, but conscientiously) conceive to be the safe limitation of assistance to executive government by private men.

"We assemble neither to reprehend nor to dictate to others, but from a principle of public duty to enter our solemn protest against the propriety or justice of those associations which, by the contagion of example, are spreading fast over England, supported by the subscriptions of opulent men, for the avowed object of *suppressing and prosecuting* writings—more especially when accompanied with REWARDS TO INFORMERS; *and, above all*, when those rewards are extended (of which there are instances) to question and to punish opinions delivered even in the private intercourses of domestic life; unmixed with any act or manifested intention against the authority of the laws.

"We refrained, at our former meeting, from pronouncing these proceedings to be illegal and punishable, because we must receive the rule from our statutes and precedents of law, which are silent on the subject; but we consider them to be doubtful in law, and unconstitutional in principle, from the whole theory and all the analogies of English justice.

"In the first place, we object to them as wholly unnecessary; and we give this objection precedence, because there ought to be a visible necessity or expediency to vindicate every innovation in the mode of administering the laws. Supposing, then, the conjuncture to be what it is by authority represented, the Crown is possessed of the most ample powers for the administration of speedy and universal justice.

"If the ordinary sittings of the courts are found at any time to be insufficient for the accomplishment of their jurisdictions, or if even a salutary terror is to be inspired for the general security, the *King* may appoint special commissions for the trial of offenders.

"If the revenue devoted to the ordinary purposes of criminal justice should be found insufficient for an unusual expenditure, Parliament is ever at hand to supply the means; and no Parliament can be supposed to refuse, or the people be suspected to murmur at, so necessary an expense.

"If information also became necessary for the discovery and conviction of offenders, the Crown may at any time, by its authority, set even informers in motion.

"But under all this awful process, public freedom would still be secured, while the public safety was maintained. The Crown, still acting by its officers, would continue to be responsible for the exercise of its authority; and the community, still bound together by a common interest, and cemented by the undisturbed affections and confidences of private life, would be sound and pure for the administration of justice.

"This we maintain and publish to be the genius of the British constitution, as it regards the criminal law.

"But when, without any State necessity, or requisition from the Crown, or Parliament of the kingdom, bodies of men voluntarily intrude themselves into a sort of partnership of authority with the executive power; and when, from the universal and admitted interest of the whole nation, in the object or *pretexts* of such associations the people (if they continue to spread as they have done) may be said to be in a manner represented by them, where is the accused to find justice among his peers, when arraigned by such combinations? Where is the boasted trial by the country, if the country is thus to become informer and accuser? Where is the cautious distrust of accusation, if the grand jury may themselves (or some of them) have informed against the object of it, brought in the very bill which they are to find, and subscribed for the prosecution of it? Where in the end is the mild, complacent, relenting countenance of the jury for trial—that last consolation which the humanity of England never denied, even to men taken in arms against her laws—if the panel is to come reeking from the vestry-rooms, where they have been listening to harangues concerning the absolute necessity of extinguishing the very crimes and the criminals which they are to decide upon in judgment, and to condemn or acquit by their verdicts?

"But if these proceedings must thus evidently taint the administration of justice, even in the superior courts, where the Judges, from their independence, their superior learning, and their further removal from common life, may be argued to be likely to assist juries in the due discharge of their office—what must be the condition of the courts of Quarter Sessions, whose jurisdictions over these offences are co-ordinate—where the Judges are the very gentlemen who lead those associations in every county and city in the kingdom, and where the jurors are either tenants and dependants, or their neighbours in the country, justly looking up to them with confidence and affection, as their friends and protectors in the direction of their affairs? IS THIS A TRIAL BY AN ENGLISH COURT AND JURY? It would be infinitely more manly, and less injurious to the accused, to condemn him at once without a hearing, than to *mock* him with the empty forms of the British constitution, when the substance and effect of it are destroyed.

"By these observations we mean no disrespect to the magistracies of our country. But the best men may inadvertently place themselves in situations absolutely incompatible with their duties. Our natures are human, and we err when we consider them as divine.

"These incongruities arising from this rage of popular accusation, or even of declared popular support to accusations proceeding from the Crown, are not our original observations. We are led to them by the analogies and institutions of the law itself.

"On this principle, criminals impeached, not by the people heated with a sense of individual danger, and personally mixing themselves with the charge and the evidence, but impeached by the House of Commons representing them, are tried from the necessity of the case, by the Lords and not by the country. This anomaly of justice arose from the humanity and wisdom of our ancestors. They thought that, when the complaint proceeded not from the Crown, whose acts the people are accustomed to watch with jealousy, but from the popular branch of the Government, which they lean towards with favour, it was more substantial justice to the meanest man in England to send him for trial before the Lords, though connected with him by no common interest, but on the contrary, divided by a separate one, than to trust him to a jury of his equals, when the *people* from which it must be taken was even in *theory* connected with the prosecution, though totally unacquainted, in fact, with its cause, or with its object.

"We appeal with confidence to the reason of the public whether these principles do not apply, by the closest analogy, to the proceedings which we assemble to disapprove. Criminal jurisdictions are local; the offence must be tried in the county, and frequently in the very town, where it is charged to be committed; and thus the accused must not only stand before a court infected by a *general prejudice*, but in a manner disqualified by a *pointed and particular passion and interest*.

"We have further to remark, that these objections to popular associations, or the prosecution of crimes, apply with double force when directed against *THE PRESS*, than against any *other* objects of criminal justice which can be described or imagined.

"Associations to prosecute offences against the Game Laws, or frauds against tradesmen (which we select as familiar instances), though we do not vindicate them, nevertheless distinctly describe their objects, and, in suppressing illegal conduct, have no immediate tendency to deter from the exercise of rights which are legal, and in which the public have a deep and important interest.

"No unqualified person can shoot or sell a hare, or a partridge, as long as a monopoly in game is suffered to continue, without *knowing* that he transgresses the law; and there can be no difference of judgment upon the existence, extent, or consequence of the offence. The trial is of a mere *fact*. By such associations, therefore, the public cannot be stated to suffer further than it always suffers by an oppressive system of penal law, and by every departure from the due course of administering it.

"In the same manner, when a swindler obtains goods on false pretences, he cannot have done so from error—the act is decisive of the intention; the law defines the crime with positive precision; and the trial is in this case, therefore, only the investigation of a fact; and in holding out terrors to swindlers, honest men are in

no danger, nor does the public suffer further than we have above adverted to.

"These associations, besides, from their very natures, cannot be so *universal*, as to disqualify the *country at large* by prejudice or interest from the office of trial; they are bottomed, besides, particularly the last (which is a most material distinction), upon crimes the perpetration of which is injurious to individuals *as such*, and which each individual in his own personal right might legally prosecute, whereas we assemble to object to the popular prosecution of those *public* offences, which the Crown, if they exist, is bound in duty to prosecute by the Attorney-General, where no individual can count upon a personal injury, and where the personal interest of the subject is only as a member of that public, which is committed to the care of the executive authority of the country.

"The press, therefore, as it is to be affected by associations of individuals to fetter its general freedom, *wholly unconnected with any attack upon private character*, is a very different consideration, for if THE NATION is to be combined to suppress writings without further describing what those writings are, than by the general denomination, *seditions*; and if the exertions of these combinations are not even to be confined to suppress and punish the circulation of books, *already condemned by the judgments of courts*, but are to extend to whatever does not happen to fall in with *their* private judgments; if every writing is to be prosecuted which *they* may not have the sense to understand, or the virtue to practise; if no man is to write but upon *their* principles, nor can read with safety except what *they* have written, lest he should accidentally talk of what he has read—no man will venture either to write or to speak upon the topics of Government or its administration, a freedom which has ever been acknowledged by our greatest statesmen and lawyers to be the principal safeguard of that constitution which liberty of thought originally created, and which a FREE PRESS for its circulation gradually brought to maturity.

"We *will*, therefore, *maintain* and *assert* by all legal means this sacred and essential privilege, the parent and guardian of every other. We *will maintain* and *assert* the right of instructing our fellow-subjects by every sincere and conscientious communication which may promote the public happiness; and while we render obedience to Government and to law, we *will* remember at the same time that, as they exist by the people's consent, and for the people's benefit, they have a right to examine their principles, to watch over their due execution, and to preserve the beautiful structure of their political system by pointing out, as they arise, those defects and corruptions which the hand of time never fails to spread over the wisest of human institutions.

"If in the legal and peaceable assertion of this freedom we shall be calumniated and persecuted, we must be contented to suffer in

the cause of freedom, as our fathers before us have suffered ; but we will, like our fathers, also persevere until we prevail.

"Let us, however, recollect with satisfaction, that the law as it stands at this very moment (thanks to our illustrious patriot, Mr. Fox, who brought forward the Libel Bill), is amply sufficient for the protection of the press, if the country will be but true to itself. The extent of the genuine liberty of the press on *general* subjects, and the boundaries which separate them from licentiousness, the English law has wisely not attempted to define ; they are, indeed, in their nature undefinable, and it is the office of the jury alone, taken from the country in each particular instance, to ascertain them, and the trust of the Crown, where no individual is slandered, to select the instances for trial by its ministers responsible to Parliament.

"This system appears to us amply to secure the Government, while it equally protects the subject ; but if this selection is to be transferred to self-constituted assemblies of men, agitated by a zeal, however honest, the press must be broken up, and individuals must purchase their safety by ignorance and silence.

"In such a state we admit that the other liberties which we enjoy under the laws might nevertheless continue as long as government might happen to be justly administered ; but should corruption or ambition ever direct their efforts against them, the nation would be surprised and enslaved—surprised by the loss of their wakeful sentinels whom they had shot for only being at their posts, and enslaved from the loss of their armour, which their adversary, under the pretence of a treaty, had cajoled them to throw away.

"But these evils become not only greater but absolutely intolerable when extended to the stimulation of spies to stab domestic peace—to watch for the innocent in the hours devoted to convivial happiness, and to disturb the sweet repose of private life upon the bosom of friendship and truth.

"It is justly observed by the celebrated Judge Forster, that words are transitory and fleeting, easily forgotten, and subject to mistaken interpretations. Shall their very existence, then, and their criminality, as depending upon context, or sequel, or occasion—shall all rest on the oaths of hired informers ? Is *this*, in the end of the eighteenth century, to be the condition of our cheerful country ? Are these to be our chains ? And are we, after we have broken them on the heads of tyrants in former ages, to sit down to forge them again for ourselves, and to fasten them on one another ?

"Our last and not the least objection to popular accusation is, the love we bear to the Government of England, and our wish that its functions may be perpetual ; it being our opinion, as expressed in our seventh resolution at our former meeting—

"That a system of jealousy and arbitrary coercion of the people

has been at all times dangerous to the stability of the English Government. For the truth of which we appeal to human nature in general, to the characteristic of Englishmen in particular, and to the history of the country.

"In the career of such a system of combination we foresee nothing but oppression; and, when its force is extinguished, nothing but discontent, disobedience, and misrule. If Government permits or countenances this distribution of its executive powers, how is it to resume them should opinions change and run the other way? From the artifices and ambition of designing men, the best Governments may, for a season, be unpopular, as we know from experience that the very worst may triumph for a while by imposture. Should such a change of opinion arrive, as in the nature of things it must, the administration of Government and justice will be distracted and weakened. It will be in vain to inculcate that subjects may persecute one another by combination, but that they must not combine for their common defence; and as, in this unnatural tide of flood, no man may expect to be acquitted, however he may love his country, so, in the ebb of the same tide, equally unnatural, it may be difficult to bring to conviction even those who may be plotting its destruction. Against both these departures from the even and usual course of justice and all their consequences, we *equally*, and with an *impartial* spirit, protest.

"When we consider the great proportion of the community that has already *hastily* sanctioned the proceedings which we dissent from, the great authority that countenances them, the powerful influence which supports them, and the mighty revenue raised upon the people—which through various channels rewards many of those who lead the rest—we are aware of the difficulties which this address has to encounter; and judging of man from his nature and his history, we expect no *immediate* success from our interposition. But we believe that the season of reflection is not far distant, when this humble effort for the public will be remembered, and its authors be vindicated by the people of Great Britain."

Mr. Sheridan said, that the very able and eloquent paper which they now had the happiness to hear read by the author himself, contained political opinions so strongly enforced, and displayed the truth in so irresistible a form, that the whole society had but one sentiment as to its merits. He agreed with his honourable friend in every syllable he had advanced. It was an admirable protest, and might serve to convey to the world the principles of the society. He therefore recommended it to be adopted by the meeting as their DECLARATION. The learned gentleman now appeared in a new and honourable character, and while he gave a proof of his manly firmness, he acted with peculiar delicacy and moderation. When these

sentiments were announced, the world would be convinced that the friends of real freedom were not to be subdued or overawed by the wretched artifice of Government. The present meeting had been treated by administration not with levity but alarm. They would, however, be soon fully persuaded that this juggling plan of policy could no longer be concealed; that their appeal to the rabble would not avail, and that the people could not dread thunder while the sky was clear; in short, that their deceptions measures would soon be exploded, and that the good sense of Englishmen would revolt at violated rights and expiring liberty. With regard to the author of the excellent paper he begged leave to say a few words. The new character which he now acted must afford the most lively sensations. If private individuals rejoiced when Mr. Erskine stood forward as their advocate, how much more must that pleasure be increased when he now appeared as the advocate of the nation at large, retained by the honourable impulse of his heart, and rewarded by the affections of the people. He volunteered his transcendent talents in the most disinterested way. Scorning a brief or fee, he courted no other reward than the applause of his fellow-citizens, he had no other object in view than the good of mankind. This pursuit was the noblest gratification of a great and a good mind. Convinced of the truths contained in the inestimable paper, he moved that it should be adopted as the creed or declaration of the society; that it should be published to the world at large as their protest against the associations; and that the members of those clubs be permitted to answer it, if they could. Mr. Sheridan then moved, "That the paper then read be adopted as the **DECLARATION OF THE FRIENDS OF THE FREEDOM OF THE PRESS**," which motion was immediately carried without a dissenting voice, and in a short time the declaration received above five hundred most respectable signatures.

THE END.

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